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Registered Federal

Friday
September 6, 1985

Selected Subjects

Animal Drugs

Food and Drug Administration

Aviation Safety

Federal Aviation Administration

Chemicals

Environmental Protection Agency

Commodity Futures

Commodity Futures Trading Commission

Fisheries

National Oceanic and Atmospheric Administration

Health Facilities

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Marketing Agreements

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Parole Commission

Radiation Protection

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Secondly, the document highlights the need for regular reconciliation of accounts. By comparing internal records with external statements, discrepancies can be identified and corrected promptly. This process helps in maintaining the accuracy of the books and prevents errors from accumulating over time.

Thirdly, the document stresses the importance of proper classification of expenses. Each transaction should be categorized correctly to facilitate accurate reporting and analysis. This allows management to understand the distribution of funds and make informed decisions about resource allocation.

Finally, the document concludes by stating that consistent adherence to these principles is essential for the success of any financial management system. It encourages a disciplined approach to bookkeeping and a commitment to transparency in all financial dealings.

Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 31 and 190

Regulation of Certain Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is hereby announcing the adoption of certain substantive amendments to its interim final rules governing the offer and sale to the public of certain leverage contracts, as well as two new rules. The amendments to the interim final rules consist of a definition of a proprietary leverage account for certain purposes, an increase in the minimum financial requirement for a leverage transaction merchant ("LTM") related to the amount of short leverage contracts entered into, an additional element of an LTM's repurchase/resale requirement, amendments to an LTM's disclosure requirements, and a prescribed order of liquidation of leverage contracts due to a margin deficiency. The two new rules require an LTM to use uniform bid and ask prices for long and short leverage contracts involving the same leverage commodity, to apply carrying charges within one percent per annum to long and short contracts, except for leverage contracts involving a foreign currency, and to report quarterly to the Commission on closed out leverage contracts.

The definition of a proprietary leverage account essentially will require an LTM to treat and deal with the funds of an owner of such an account separately from the funds of other leverage customers. An LTM must cover leverage contracts entered into with proprietary persons to the same extent

as other leverage contracts, but the cover for customer and proprietary leverage contracts must be separately maintained and identified.

The amendment to the minimum financial requirement for an LTM increases the requirement by an amount equal to 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the LTM which are covered. The Commission adopted this amendment to compensate for the fact that an LTM will be unable to cover its obligations to leverage customers under short leverage contracts by means of physical commodities, as it is required to do with respect to 25 percent of its obligations to leverage customers under long leverage contracts.

The Commission also adopted as an additional element of an LTM's repurchase/resale requirement a provision which requires that at any time an LTM is offering to enter into or entering into a new leverage contract, either long or short, involving a particular leverage commodity, the LTM must also offer to repurchase any previously-entered long leverage contract and resell any previously-entered short leverage contract involving the same leverage commodity.

The amendments to an LTM's disclosure requirements modify the current format of the customer Confirmation Statement for a long leverage contract, specify the format required to be used for the customer Confirmation Statement for a short leverage contract, and replace the Illustrative Transaction currently required to be included in an LTM's Disclosure Document for a long leverage contract with a filled-in version of the proposed customer Confirmation Statements for long and short leverage contracts.

Rule 31.18 generally provides that an LTM cannot liquidate a leverage contract because of a margin deficiency without contacting the leverage customer and allowing 24 hours for the customer to respond. Rule 31.18(b) allows an LTM, in the event a leverage customer's account equity falls below 50 percent of aggregate minimum margin with respect to the leverage contracts in the account, to liquidate sufficient contracts to restore minimum margin without prior notice to the customer. The amendment to that rule requires an

LTM to liquidate contracts in declining order of loss, beginning with the position reflecting the greatest loss first.

The first new rule requires an LTM to use the same set of bid and ask prices for both a long and a short leverage contract involving the same leverage commodity, and also requires an LTM to apply carrying charge rates on a short leverage contract and a long leverage contract that are within one percent per annum of each other, except for leverage contracts involving a foreign currency. The second new rule requires each LTM to file a quarterly report with the Commission containing information with respect to every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or delivery, including the profit or loss to the leverage customer on any contract which is repurchased, resold or liquidated.

EFFECTIVE DATE: November 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-8955; David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-9880; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 2, 1985, the Commission published in the *Federal Register* certain proposed substantive amendments to its leverage rules, two proposed new rules, and a request for comment on two other issues (50 FR 102).¹ The proposals included a proposed definition of a proprietary leverage account for certain purposes, a proposed increase in the

¹ On the same day, the Commission also published in the *Federal Register* (50 FR 22) technical and conforming amendments to its leverage rules so as to encompass and accommodate the regulation of short leverage contracts, since the leverage rules as originally promulgated (49 FR 5498, February 13, 1984) governed only long leverage contracts.

minimum financial requirement for an LTM, a proposed additional element of an LTM's repurchase/resale requirement, and proposed amendments to an LTM's disclosure requirements. The Commission also proposed two new rules which would require an LTM (1) to use uniform bid and ask prices and carrying charges for long and short leverage transactions, and (2) to report quarterly to the Commission on closed out leverage contracts. The Commission also requested comment as to the appropriate carrying charge for leverage contracts involving a foreign currency and with respect to the order of liquidation of leverage contracts pursuant to Rule 31.18(b).

The Commission permitted thirty days within which interested persons could submit written comments on the proposals. The Commission received five written comments on the proposals. Two contract markets submitted written comments, as did an LTM and two applicants for registration as an LTM. The Commission carefully considered all of the written comments and has determined to adopt the proposals essentially in the manner proposed, with certain minor adjustments explained more fully below.

II. Customer/Proprietary Account Distinction

When the Commission originally adopted the interim final leverage rules, it did not adopt a proprietary account definition with respect to leverage contracts. The Commission stated at that time, however, that under Part 190, the Commission's bankruptcy rules, claims of insiders such as principals or associated persons would be subordinate to customer claims in the case of a bankruptcy of an LTM. 49 FR 5498, 5516 (February 13, 1984). The Commission reconsidered this issue, and its staff also reviewed the Disclosure Documents of the three applicants for registration as an LTM, two of which indicate that principals of the firm have entered into leverage contracts for their own account with the firm. Upon that reconsideration and review, the Commission determined to propose a distinction between customer and proprietary accounts for purposes of Rule 31.12, which requires the segregation of leverage customer funds from an LTM's other funds, Rule 31.11, which requires an LTM to provide a Disclosure Document to prospective leverage customers, and Rule 31.26, an LTM's quarterly reporting requirement. None of the commenters opposed the concept of a customer/proprietary account distinction, and the Commission

has determined to adopt this proposal as it was proposed.

The definition of a proprietary leverage account is set forth in Rule 31.4(e) and it parallels the proprietary account definition for futures commission merchants set forth in Rule 1.3(y) (17 CFR 1.3(y) (1985)). Essentially, a proprietary leverage account is an account which is at least ten percent owned by a principal, an associated person or a manager of the LTM, or by someone involved with handling leverage customer funds or recordkeeping related to such funds. The Commission is also adopting, as proposed, a conforming change to the definition of the term "leverage customer" in Rule 31.4(d) and a conforming change to the definition of the term "non-public customer" under § 190.01(bb) of the Bankruptcy Rules to include the owner of a proprietary leverage account. The Commission has also determined to adopt a conforming change to Rule 31.9(b)(2) to make distinctions between customers, non-customers and proprietary accounts for financial rule purposes, which would parallel the distinctions made under Rule 1.17. The Commission believes that these distinctions will avoid confusion and unnecessary capital charges. Under the financial rule, a proprietary account would be an account of the LTM itself or its general partners. All accounts owned by persons who otherwise fall under the general proprietary leverage account definition in Rule 31.4(e) would be deemed non-customers under Rule 31.9. Thus, there will be a capital charge if their leverage accounts are undermargined pursuant to Rule 31.9(b)(9) (as there is now, since those persons have been treated as customers), but other capital charges for proprietary accounts will be applicable only to accounts of the LTM or its general partners.

The Commission stated when it proposed the customer/proprietary account distinction that such a rule amendment would help to ensure appropriate treatment of leverage customers in the case of the bankruptcy of an LTM, and make the treatment of leverage customer funds more consistent with the treatment of customer funds by futures commission merchants.

The Commission further stated that its intent in proposing the customer/proprietary account distinction was to make sure that the funds of the owners of proprietary leverage accounts are not commingled with the funds of other leverage customers, and that the cover for an LTM's obligations to leverage customers is held separate from and can

be separately identified from cover for leverage contracts of proprietary leverage account owners. The customer/proprietary account distinction, therefore, does not apply to Rule 31.8 regarding cover, and an LTM must cover leverage contracts held by owners of proprietary leverage accounts to the same extent as leverage contracts held by other customers. Such cover for proprietary leverage accounts, however, must be maintained in an account with a futures commission merchant which is separate from the account containing cover for leverage customers, in the case of futures and exchange-traded options used as cover. Physical cover for leverage contracts held by leverage customers also must be separately identifiable from physical cover for leverage contracts held by owners of proprietary leverage accounts. This will ensure that all leverage contracts entered into by an LTM are properly covered so as to enhance the LTM's financial condition and at the same time further ensure that if an LTM becomes bankrupt, leverage customers receive priority treatment over the owners of proprietary leverage accounts.

The customer/proprietary account distinction also applies to Rule 31.11, which sets forth an LTM's disclosure requirements, except for paragraph (k) of Rule 31.11, which requires an LTM to send a Confirmation Statement to a leverage customer within 24 hours after entry into a leverage contract. An LTM, therefore, need not provide the owner of a proprietary leverage account with a Disclosure Document. (An LTM is free to do so, however.) The owner of a proprietary account, such as an associated person or a principal of an LTM, should be familiar with the information contained in such a Document based upon the person's affiliation with the LTM. An LTM must, however, send a Confirmation Statement to an owner of a proprietary account who enters into a leverage contract just as it does for any other customer. The customer/proprietary account distinction also applies to new Rule 31.26, which is discussed more fully below, and therefore an LTM must indicate on the quarterly report whether a particular leverage contract was held by a leverage customer or by a proprietary person.

The customer/proprietary account distinction does not apply to the remainder of the leverage rules. For example, the repurchase and resale rule (Rule 31.10), the margin call rule (Rule 31.18) and the limited right to rescind rule (Rule 31.23) apply to proprietary persons as well as leverage customers.

and the same is true with respect to the rules regarding unlawful representations and prohibiting guarantees against loss (Rules 31.19 and 31.20).² An LTM must maintain the same records regarding a leverage contract with, and make the same reports to, the owner of a proprietary account (Rules 31.14, 31.15 and 31.17). An LTM need make no distinction on its monthly report (Rule 31.16) between customer and proprietary leverage accounts, and all leverage contracts entered into by the LTM should be reported together. The Commission may, however, make a special call for information to compare proprietary leverage accounts with leverage customer accounts (see Rule 31.14(a)), and Commission auditors may also examine an LTM's records to make such a comparison. The Commission's adoption of the customer/proprietary account distinction, therefore, leaves most of an LTM's operations unchanged with respect to leverage contracts entered into by proprietary persons, except to the extent changes are necessary to ensure that funds and cover for leverage contracts of leverage customers are segregated from funds and cover for leverage contracts of proprietary leverage account owners.³

Although none of the commenters objected to the principle of a customer/proprietary account distinction, two commenters made technical suggestions as to how to achieve this. One commenter suggested that the Commission simply amend Rule 1.3(y), the definition of proprietary account with respect to a futures commission merchant, rather than adopt a separate definition with respect to an LTM. The Commission did not adopt this suggestion because the definition of a proprietary leverage account is

interrelated with the definition of a leverage customer, which is set forth in Rule 31.4(d),⁴ and the Commission does not believe that these two definitions should be contained in different Parts of the regulations promulgated under the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 1 *et seq.* (1982)). Almost all of the definitions which are relevant to leverage transactions are contained in Part 31, except for such definitions as LTM and associated person of an LTM, which appear in the general definition provision, Rule 1.3, because they are also referred to in the registration rules set forth in Part 3.

Another commenter suggested that the Commission's stated purposes for making a customer/proprietary account distinction could be achieved under the existing leverage recordkeeping rules and by adopting the proposed amendment to the definition of non-public customer set forth in § 190.01(bb) of the Bankruptcy Rules, without making the proposed amendments to Rule 31.4 (d) and (e). The Commission has also not adopted this suggestion. The definition in § 190.01(bb) is merely derivative of the definitions set forth in Rules 1.3(y) and 31.4(e). Unless the concept of a proprietary leverage account were contained in Rule 1.3(y), which is not the case for the reasons discussed in the preceding paragraph, or in Rule 31.4(e), an amendment to § 190.01(bb) would be meaningless.⁵

III. Minimum Financial Requirement

The Commission proposed an amendment to the minimum financial requirement for an LTM set forth in Rule 31.9(a) which would increase the requirement by an amount equal to 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the LTM which are covered. The Commission proposed this amendment to compensate for the fact that an LTM will be unable to cover its obligations to leverage customers under short leverage contracts by means of physical commodities, as it is required to do with respect to 25 percent of its obligations to leverage customers under long leverage

contracts.⁶ Only two of the commenters addressed this issue, with one in favor and one opposed, and the Commission has determined to adopt the amendment as proposed.

The commenter which opposed the amendment to an LTM's minimum financial requirement made the following erroneous statement in its comment letter:

If the LTM entered short leverage contracts that were not covered, the LTM would be required to increase its minimum net capital by an amount equal to 20 percent of the market value of the commodities subject to uncovered leverage contracts. Thus, this 2.5 percent requirement would be in addition to the 20 percent rule.

The Commission clearly noted when it proposed the additional 2½ percent adjusted net capital requirement that the amendment would apply only to covered short leverage contracts. As is the case with long leverage contracts, an LTM must cover 90 percent of its total obligations to leverage customers under short leverage contracts, and, accordingly, up to 10 percent of such obligations could be uncovered. For any uncovered short leverage contracts, the LTM's minimum adjusted net capital requirement is increased by an amount equal to 20 percent of the market value of the physical commodities subject to such uncovered leverage contracts under existing Rule 31.9(a), 17 CFR 31.9(a) (1985). As the Commission further stated when it proposed the amendment: "This would be unchanged by the proposed amendment, and the proposed amendment would also not be cumulative for uncovered short leverage contracts, i.e., the appropriate addition to the LTM's minimum adjusted net capital requirement for its uncovered obligations would remain at 20 percent, and would not increase to 22½ percent." 50 FR 102, 105 (January 2, 1985) (emphasis added).

The effect of the amendment can be illustrated by assuming that an LTM has entered into \$5 million worth of long leverage contracts, with \$100,000 of that amount uncovered, and \$1,050,000 worth of short leverage contracts, with \$50,000 of that amount uncovered. Such an LTM's minimum adjusted net capital requirement would be \$2,500,000, plus \$30,000 (20 percent of the uncovered amount of \$150,000), plus \$25,000 (2½ percent of the \$1,000,000 covered short

² The owner of a proprietary leverage account should also be subject to the same margin requirements and other charges related to a leverage contract, and the same bid and ask prices, as any other customer.

³ When the Commission proposed the customer/proprietary account distinction, the Commission stated that it might determine to make certain minor, technical changes to Form 2-FR, the LTM financial reporting form, to reflect the distinction, particularly with respect to the cover schedules. See also Rule 31.8(c) (17 CFR 31.8(c) (1985)), which requires an LTM to maintain a daily cover computation in a format identical to the Form 2-FR cover schedules. Such changes, as well as appropriate changes in the Statement of the Computation of the Minimum Capital Requirements on Form 2-FR to reflect the amendment to the minimum financial requirement (Rule 31.9(a)) discussed below, have been made. Since Form 3-FR does not appear in the Code of Federal Regulations, those changes are not being published in this release. The Commission will, however, send copies of the amended Form 2-FR and this release to appropriate persons, and they will also be available upon request to the Commission.

⁴ A similar interrelationship exists between the definition of the term "customer" which is set forth in Rule 1.3(k) (17 CFR 1.3(k) (1985)) and the definition of a proprietary account in Rule 1.3(y).

⁵ These two commenters also noted that accounting and computer software changes would be necessary to implement the customer/proprietary account distinction, and one of the commenters requested that if the proposal were adopted, the effective date be no sooner than 60 days after publication in the Federal Register. As indicated above, the effective date for all of the rule changes discussed in this notice is sixty days following publication.

⁶ A more complete explanation of the Commission's reasons for proposing this increase in an LTM's minimum financial requirement is set forth in the release announcing the proposal. 50 FR 102, 105 (January 2, 1985).

leverage contracts), for a total of \$2,555,000.

IV. Repurchase/Resale of Leverage Contracts

The Commission received two comments, one in support of and one opposed to, the proposed repurchase/resale requirement for long and short leverage contracts. The one commenter who expressed opposition to the proposed repurchase/resale provision stated that the Commission should not mandate a repurchase/resale requirement since circumstances beyond the control of an LTM could arise which would make the suspension of trading necessary. Accordingly, the LTM should be free to act to protect the firm and its customers in the event of adverse circumstances which were beyond the control of the LTM, such as in the case of *force majeure*.

With respect to circumstances which are beyond the control of an LTM and which could make the suspension of trading necessary, the Commission notes that Rule 31.11(a)(2)(ix) requires an LTM to set forth clearly the circumstances which constitute a basis for invoking *force majeure*. Thus, the Commission believes that the rules already provide a method by which an LTM can protect itself and its customers in the event that this class of adverse circumstances arises.

Further, the Commission wishes to point out that the proposed amendment to Rule 31.10 does not mandate that a leverage transaction merchant continually offer to enter into or enter into leverage contracts with customers. The proposed amendment simply requires that any time an LTM is offering to enter into or enters into a new leverage contract, either long or short, involving a particular leverage commodity, the LTM also be required at that time to offer to repurchase previously entered into long leverage contracts and to resell previously entered into short leverage contracts involving the same leverage commodity.⁷ As the Commission has

noted, an LTM would be permitted to enter into new long leverage contracts without also entering into new short leverage contracts involving the same leverage commodity and vice versa (50 FR 102, 105, January 2, 1985).

V. Disclosure Document and Customer Confirmation Statement

The Commission has adopted certain conforming language in the bold-faced risk disclosure statement required by Rule 31.11(a)(1) which incorporates references to short leverage contracts. One commenter objected to the language contained in the required risk disclosure statement, stating that referencing both long and short leverage contracts in the bold-faced disclosure would imply that the LTM or prospective LTM is offering to enter into both types of contracts when in fact the LTM may be offering, for example, only long leverage contracts. In such a case, the commenter contends that reference to both types of leverage contracts could confuse leverage customers or prospective leverage customers. This commenter suggested that the Commission either permit an LTM to delete from the bold-faced disclosure statement language referencing short leverage contracts if the LTM is not offering this type of contract, or, alternatively, permit an LTM to adopt separate disclosure statements for each type of leverage contract offered.

The Commission has determined to let stand the previously adopted language in the bold-faced risk disclosure statement which references both long and short leverage contracts. However, if an LTM believes, for example, that it would be more appropriate to delete reference to a specific type of leverage contract if such type of contract is not offered, the LTM may petition the Commission pursuant to Rule 31.24 for an exemption from this requirement.⁸

The Commission also requested comment on a proposal to revise the Confirmation Statement and the requirement that an LTM provide in the Disclosure Document a filled-in version of the Confirmation Statement which includes a formula for the customer independently to calculate his or her

own break-even point for both long and short leverage contracts.

All of the commenters generally supported the proposal to provide in the Disclosure Document a filled-in version of the Confirmation Statement and a formula for the break-even calculation. However, two commenters, while supporting the inclusion of the break-even formula, stated that the rule should also require an LTM to provide an actual break-even calculation using the figures in the representative Confirmation Statement printed in the Disclosure Document.

The Commission has carefully considered these comments but is not persuaded that requiring an actual break-even calculation for a representative long and short leverage contract would necessarily provide a leverage customer or prospective leverage customer with more accurate information about the risks of leverage trading than providing a formula with which the customer can independently make such a calculation. In this regard, the currently required break-even calculation assumes that the representative leverage contract would be held open for one year. Since at least one component of the cost of a leverage contract (carrying charges) is a function of the length of time the contract is open, and since it is reasonable to expect that different customers will have different time horizons with respect to their holding periods, this one-year holding period could, in itself, be misleading. Therefore, the Commission believes it is more appropriate that the break-even point for each customer be determined using the customer's own choice of assumptions regarding the time frame in which the leverage contract will be held.

One commenter stated that the format proposed by the Commission for the Confirmation Statement presented certain technical problems relating to the ability of its computer to produce Confirmation Statements in such form and the ability to include with that format a pre-printed name and address for use in windowed envelopes. The commenter suggested that an LTM could avoid potential data processing formatting problems if it were permitted to use a Confirmation Statement in a format different from that in the regulations but containing all the information required by Commission rule in the same basic order. This commenter suggested that LTMs could submit a sample format of the Confirmation Statement for Commission approval.

⁷In this regard, the Commission is also adopting a rule requiring LTMs to use the same set of bid and ask prices for long and short leverage contracts, as discussed more fully below. Therefore, if an LTM is offering to enter into or entering into new long leverage contracts at its ask price, the resale price of a short leverage contract would be the same as the LTM's current ask price for long leverage contracts. If an LTM is offering to enter into or entering into new short leverage contracts at its bid price, the repurchase price of a long leverage contract would be the same as the LTM's current bid price for short leverage contracts.

⁸The Commission further notes that if such a petition were granted and the petitioning firm later decided to begin offering short leverage contracts, the firm's Disclosure Document would have to be amended to incorporate short leverage contracts. The terms and conditions of the firm's leverage contracts would also have to be amended, and these amendments would have to be submitted to the Commission in accordance with Rule 31.6(c) and, therefore, the amendments would have to be submitted at least 45 days prior to their effective date.

The Commission believes that the Confirmation Statement utilized by LTM's should be standardized to the maximum extent possible. Such standardization will allow customers or prospective customers to compare the various costs associated with leverage contracts offered by different LTM's. However, if an LTM believes that the Commission's required format for the Confirmation Statement creates a data processing problem, the LTM could petition the Commission pursuant to Rule 31.24 for an exemption from the required format. Such exemption requests would be considered on a case-by-case basis.

This commenter also suggested that the word "value" appearing in the Confirmation Statement and the break-even formula be replaced with the word "price" because in the commenter's opinion price is more descriptive and would be helpful in determining whether a customer had reached a break-even point. The Commission believes, however, that the word "value" is more appropriate since the amounts appearing on the Confirmation Statement and the amounts used in the break-even formula involve calculations of price times quantity. Since this product varies with the numbers of contracts as well as the price of the leverage commodity, the product is more accurately termed the "value" rather than the "price" of the contract.

In addition, one commenter objected to the proposed requirement that an LTM must include the unpaid balance applicable to a leverage purchase in the Confirmation Statement. In the absence of transaction-by-transaction accounting, the commenter stated that this would be impossible if there is another open long position in the customer's leverage account. However, the commenter has misunderstood the Commission's proposed requirement. Rule 31.11(k)(1)(ii)(F) states that the Confirmation Statement must show "the total unpaid balance for the transaction." (Emphasis added). This figure should be readily available to the LTM. Nevertheless, in order to avoid confusion, the Commission is amending Rule 31.11(k)(1)(ii)(F) and the sample Confirmation Statement to read "Total unpaid balance for this transaction." Transaction-by-transaction accounting is further discussed below in this release.

This commenter also objected to the proposal to require an LTM to give the current equity in the customer's account on the Confirmation Statement. The commenter claims that this information is already provided in the monthly

statements to customers and that it may mislead customers if it is also included on the Confirmation Statement. Another commenter recommended that the Confirmation Statement be clarified to reflect the fact that the equity shown is for the customer's existing aggregate positions, excluding the specific confirmed transaction. In addition, this commenter stated that the Confirmation Statement for a first-Time Customer should show that the customer has no equity in the account until the LTM receives the down payment.

With regard to the former commenter's statements, customer complaints received by the Commission indicate that information on current equity is often difficult for a customer to obtain. For this reason, the Commission believes this information should be included in the Confirmation Statement, since customers normally undertake leverage transactions between monthly statements. Second, the line immediately above "Current Equity" in the Confirmation Statement is entitled "Total Amount Due Now to Initiate This Transaction," which should avoid any confusion as to whether or not a customer has to transmit funds to the LTM.

Further, the Commission notes that Rule 31.11(k)(1)(ii)(J) states that the Confirmation Statement must give the "current equity in the individual customer's account as of the date of the transaction," thus providing a customer with a "snapshot" of his account equity at the close of business on the day he enters into the new transaction. This figure normally would not include the new transaction. In particular, the initial margin deposit for the new transaction would not be included in the current equity figure unless the customer had already paid it. Similarly, depending on an LTM's procedures for calculating equity (i.e., when new positions are first marked-to-market) there may have been no change in contract value for the new transaction. In this regard, the account equity shown on a first-time customer's Confirmation Statement may be zero. As a result, in order to avoid misunderstanding, the Commission is amending Rule 31.11(k)(1)(ii)(J) and the current equity entry in the sample confirmation statement to read "Current Equity in Account Excluding this Transaction." If an LTM's accounting procedures would result in the inclusion of the new transaction in the current equity figure, it may petition the Commission for an exemption.

VI. Bid and Ask Prices and Carrying Charges

No objections were raised to the Commission's proposal to require the same bid and ask prices for long and short leverage contracts, and Rule 31.25(a) is being adopted as proposed. However, with regard to the proposed requirement that carrying charge rates be the same for long and short leverage contracts, certain commenters suggested that proper disclosure by an LTM, rather than restrictions on an LTM's manner of doing business, is the appropriate way to handle this issue. One commenter argued that the Commission's proposal on carrying charges was tantamount to government "price-fixing."

The Commission rejects this view. Leverage contracts do not have all the safeguards of exchange trading. There is no clearinghouse to ensure the financial integrity of the contract and prices are not determined competitively. Instead, the LTM unilaterally determines prices and customers are solely dependent on the LTM for performance on the contract. As a result, the additional restrictions the Commission has proposed are warranted.

Also, the repurchase/ resale requirement, discussed above, and the requirement that LTM's maintain one set of bid and ask prices and approximately equivalent carrying charge rates on long and short leverage contracts are meant to ensure consistency on the part of an LTM in dealing with customers who are long or short the leverage contract. In this regard, a short leverage contract can be viewed simply as the mirror image of a long leverage contract, and the restrictions on carrying charge rates and bid and ask prices are intended to ensure that the total price of a long leverage contract (ask price plus carrying charges) is consistent with the total price of a short leverage contract (the bid price plus carrying charges).

Three commenters objected to, and one commenter agreed with, the Commission's proposal to require carrying charge rates on long and short leverage contracts to be equal. Those objecting argue, in effect, that the cost of covering long leverage contracts substantially exceeds the income derived from covering short leverage contracts, necessitating different carrying charge rates. One commenter stated that the proposed requirement would force an LTM to operate at a loss on short leverage contracts, which would be tantamount to a ban on such contracts. Another commenter stated that the proposal would either compel it to discontinue the offer of short leverage

contracts altogether, or would compel it to discontinue offering new long leverage contracts when it offered new short leverage contracts in a particular commodity, thereby curtailing the two-way market. This commenter also suggested that LTM be allowed to levy different rates on margin deposits than on contract value.

In this regard, Commission staff estimated the costs and income associated with covering long and short silver leverage contracts and the effects of a uniform interest rate for margins and contract value. These calculations indicate that the cover income from a short leverage contract is similar to the cover cost on a long leverage contract, and that both are related to the contango, or the implied carrying charge rate, in comparable futures contracts.

In particular, calculations by Commission staff indicated that the break-even carrying charge rate applied to a long leverage contract's unpaid balance and the break-even carrying charge rate applied to a short leverage contract's contract value plus margin deposit differed by less than one-fifth of one percent per year on a given day. The calculations involved a comparison in March of 1985 between the bankers' acceptance rate used in financing a portion of the 25% of a long leverage contract's value in physical cover compared with the exchange-traded futures contango rate which is the cover rate available for all of a short leverage contract's value.⁹

In this regard, Commission staff contacted a number of major banks in New York and Chicago regarding their commodity lending practices and verified that they lend against commodity collateral at rates substantially lower than those quoted by the objecting commenters. The rates quoted by the banks were generally equal to the bankers' acceptance rate, which at that time was approximately 1 1/4% below the prime rate. The same banks indicated that they would lend to commercials in the metals business at the prime rate plus 1% to 2% for unsecured borrowing. These unsecured borrowing rates approximate those quoted by the commenters.

Given the Commission's cover requirements for leverage contracts and the rates at which long physical cover can be financed on a collateralized basis for non-currency commodities, the costs of long cover are quite close to the income received from the futures carrying charge rate on short leverage

cover. In particular, seventy-five percent of the long cover requirement can be held in futures contracts. Second, physical metal purchased for cover can be financed and stored at a cost very close to the futures contango rate of physical arbitrage. Metals dealers normally borrow to purchase metals on a collateralized basis and sell futures whenever the futures carrying charge rate starts to increase above the cost of borrowing to purchase physical metal plus storage and insurance costs. Conversely, the sale of physical metal and purchase of futures tend to occur when the futures carrying charge rate falls below the actual cost of borrowing, storage and insurance costs. Thus, the collateralized borrowing of funds to purchase physical metal is closely related to the futures contango.

Also, a leverage transaction merchant has a pool of customer margin money that can be used to purchase physical cover and margin futures cover positions. Assuming that leverage customers' initial margin deposits are 20% of a leverage contract's value on average and that FCMs require 5% of a futures contract's value to margin futures positions, 16 2/3% of the leverage contract's physical cover may be purchased using customer funds (after using 3 1/4% (75% x 5%) of a leverage contract's value from customer margins to margin the futures cover) with the remaining 8 1/4% of the leverage contract's cover value being borrowed from banks at collateralized rates plus storage costs which approximate futures carrying costs.¹⁰ Therefore, all of the long contract value can be covered at rates equal to or very near the futures contango; none of the long leverage contract's cover value has to be borrowed at rates similar to those quoted by the objecting commenters.

Thus, the Commission cannot accept the contention by the objecting commenters that the proposed requirement of a common carrying charge rate on long and short leverage will be equivalent to a ban on short leverage due to a disparity in the cost of long leverage cover versus the income from short leverage cover. Rather, the proposed requirement would foster a

consistency in the treatment of long and short leverage customers under the Commission's leverage program.

Therefore, the Commission is adopting a final rule that requires the long and short leverage carrying charge rates, other than for leverage contracts involving a foreign currency, to be within 1% per annum of each other and that any difference greater than 1% per annum be justified in detail to the Commission by means of petition.

Commission Rule 31.4(g)(3) specifically provides for four foreign currencies under the definition of leverage commodities. Unlike the other leverage commodities, intertemporal price relationships for these commodities do not reflect United States interest rates, but interest rate differences between the United States and the country of the particular currency. In addition, foreign currency futures prices are more likely to be inverted than the prices of other leverage commodities. With respect to these leverage contracts, the one commenter who responded to this question agrees with the Commission that carrying charges on such contracts should reflect interest rate differences between the United States and the country of the particular currency. This commenter further asserted that deposits on such transactions should earn a rate equal to the United States interest rate which may be different from the interest rate charged or credited on the contract value, irrespective of which foreign currency is involved.

The Commission acknowledges these comments. Impediments to collateralized borrowing of foreign currencies and the receipt of interest on domestic deposits of foreign currencies make it impractical to require LTM to use the same carrying charge rate for long and short leverage contracts. Under certain circumstances, such as when foreign currency futures contracts are trading in backwardation, these impediments may cause the costs of covering long leverage contracts significantly to exceed the costs of covering short leverage contracts. In addition, the greater likelihood that foreign currency prices may display backwardation also necessitates their special treatment.

Therefore, the Commission has determined not to apply its new rule on carrying charges to leverage contracts on foreign currencies.¹¹ Any other

⁹ Staff documents further reflecting these calculations have been placed in the Commission's public comment file concerning this rulemaking.

¹⁰ Rule 31.4(a)(2)(i) states that the 25 percent physical cover requirement may take the form of warehouse receipts provided: "That the balance of the principal and accrued interest on any loan against such warehouse receipt does not exceed 70 percent of the current market value of the commodity represented by each receipt." In this case, we are assuming only 8 1/4 percent of the leverage contract's cover value is financed on an encumbered basis and not the maximum allowable amount of 17.5 percent (.70 x 25). Thus, the LTM has a cushion of 8.75 percent (17.5 - 8.75) to meet other contingencies.

¹¹ It should be noted that the Commission is retaining the current requirement for all leverage

exception from the regulations for leverage contracts on foreign currencies must be the subject of a petition. All differences of foreign currency leverage contracts from other leverage contracts must be fully explained in the LTM's Disclosure Document.

VII. Quarterly Reporting Requirement

The Commission proposed a new Rule 31.26 which would require each LTM to file a quarterly report containing information with respect to every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or delivery, including the profit or loss to the leverage customer on any contract which was repurchased, resold or liquidated. Two commenters supported the Commission's proposal, and three commenters objected. After a careful review of those comments, the Commission has determined to adopt the substance of the quarterly reporting requirement, set forth in Rule 31.26(a), as proposed. However, the Commission has determined not to adopt the provisions of proposed Rule 31.26(b), which would have required an LTM to accompany its quarterly report with a list of all leverage customers who had a leverage contract closed out during that quarter, in numeric order by customer account identification number, including the customer's name, address, telephone number and customer account identification number. Proposed Rule 31.26(c), which stated that the quarterly report would have to be provided in both machine-readable and hard copy form, and set forth a procedure whereby each leverage firm would have to submit a proposed computer format and coding structure for Commission approval according to a specified timetable, has been redesignated as Rule 31.26(b) and has been adopted essentially in the form proposed.

Although the Commission is not requiring that a list of customer names, addresses and telephone numbers accompany the quarterly report, the Commission wishes to emphasize the need for accurate information. The Commission is adopting that provision of the quarterly reporting proposal

which requires that a hard copy of such data be submitted and that the hard copy be signed by an appropriate high-level person such as the chief executive or chief financial officer. The Commission also wishes to note that its staff may undertake procedures to verify the quarterly report data under the Commission's general inspection and auditing authority, and this may include a spot check of customers.

In addition to the objections to the customer list, certain commenters also raised objections to the quarterly report itself. Commenters stated that the information called for is immaterial for disclosure purposes or for purposes of Commission determination as to whether to lift the leverage moratoria. Commenters also questioned the fairness and usefulness of requiring LTMs to submit more data than futures commission merchants are required to submit. The Commission is not persuaded by these comments. In futures trading, there is a commercial need for, and commercial participation in the development of, a new futures contract. None of those elements is present in leverage trading, so it is irrelevant to compare information on leverage trading with information on trading by non-commercial futures customers. The Commission further believes that, as it stated when it proposed Rule 31.26, the data to be obtained will be useful in assessing proper disclosure and whether and if so the bases under which leverage should be expanded and, in particular, whether any further requirements are necessary. The information could also be useful in helping the Commission to prepare any studies it might wish to make, or be required to make, regarding leverage trading.

Certain commenters stated that profit or loss cannot be measured on a contract-by-contract basis, since funds added to an account are not allocated to a specific contract because it would be completely arbitrary to do so. The Commission's staff undertook to investigate the practices of the leverage firms because it was believed that the information set forth in proposed Rule 31.26 was already required by the interim final leverage rules to be compiled and furnished to customers.

After review of the Form 188s and 189s filed by two firms for February 1985, the staff asked these firms for the monthly leverage customer account statements and transaction statements for all kilo gold contracts closed out during February. The staff's review of those monthly statements indicated that the carrying charge is not reported for each leverage contract, but is only

reported for the entire account. Commission staff calculated carrying charges which differed in varying amounts from those reported in the monthly statements, making it questionable whether a leverage customer can compute the carrying charges assessed by the LTM. Although the Commission now recognizes from the comments received that its rules may not have been entirely explicit with respect to the reporting to the leverage customer of carrying charges for each leverage contract, the Commission nevertheless believes that its rules can and must be interpreted as requiring such reporting. Without such reporting, a leverage customer would be deprived of material information regarding his leverage contracts which he would be unable to obtain otherwise. Disclosure of this information better informs the customer of the cost of each contract, allows him to make more informed decisions and should reduce the number of complaints received from customers who thought they were liquidating an apparently profitable position, only to learn they lost money due to carrying and termination fees. In addition, allowing an LTM discretion as to how carrying charges, margin deposits and other charges should be distributed among the various leverage positions in a customer's account would make the information required to be provided in the Disclosure Document highly misleading. The rules relating to a leverage Disclosure Document assume the direct application of margin deposits, fees and carrying charges on a contract-by-contract basis.

The carrying charge for each leverage contract is required to be reported on the monthly leverage customer account statement by Commission Rule 31.15(b)(4), which provides for:

A detailed accounting of all financial charges and credits to the previous ledger balance during the monthly reporting period, including all leverage customer funds received from or disbursed to the leverage customer, and all commissions and fees incidental to the contract which have been charged and received, as well as all realized profits and losses. (Emphasis added).

Such a "detailed accounting" of charges should include the carrying charge per contract, not just the total carrying charge for the entire account. The recordkeeping requirements for an LTM also require the LTM to record the carrying charges for each leverage contract as part of its financial ledger, pursuant to Rule 31.14(c)(1), which requires to LTM to maintain:

A financial ledger which will show separately for each leverage customer's

commodities that limits the charging of carrying charges to the unpaid balance of the long contract. In response to one commenter's inquiry, the Commission hereby explicitly reaffirms that principle. In the case of a short leverage contract, an LTM must pay or credit the carrying charge on the full contract value and interest on the customer's margin deposit at the same rate. It should also be noted that the LTM's obligation to pay interest on the margin deposit on a short leverage contract is not to be diminished by the LTM's ability to keep earnings on customer funds invested in government obligations. (See Rule 31.12(e)).

account all charges against and credits to such leverage customer's account, including but not limited to all charges and credits for purchases, repurchases, sales, resales, liquidations, rescissions and settlements by delivery of leverage contracts (including the corresponding transaction identification numbers) and all funds transferred, deposited into, or withdrawn from the leverage customer's account. (Emphasis added.)

This provision requiring the recordation of all charges to the customer's account must be read to include all carrying charges, i.e., carrying charges for each leverage contract, not just the sum of the individual carrying charges.

In 1983, the Commission proposed Rule 31.14(d), which provided:

Each leverage transaction merchant shall prepare, as of the last business day of each calendar month, a listing of all leverage contracts carried for leverage customers during the calendar month. Such listings shall be by type of leverage commodity and contract and shall include the following details with respect to each leverage contract:

- (1) The type of leverage commodity and contract;
- (2) The date of execution and the maturity date;
- (3) The transaction identification number;
- (4) The value of the leverage contract when initiated;
- (5) Details of initial charges, carrying charges and termination charges which have occurred since the previous month-end date;
- (6) The date and amount of margin payments by the leverage customer to the leverage transaction merchant since the previous month-end date;
- (7) The date and the amount of margin credits received by the leverage customer from the leverage transaction merchant since the previous month-end date; and
- (8) The realized profit or loss on leverage contracts terminated during the month and the unrealized profit or loss on each open leverage contract marked to the market on the basis of the leverage transaction merchant's bid price since the previous month-end date. (Emphasis added.)

This proposal would have required an LTM to keep a record of the carrying charges assessed on each contract.

The recordkeeping requirement regarding carrying charges in proposed Rule 31.14(d)(5) was not adopted in the final Rule 31.14(d). In adopting the modified rule, the Commission stated that it made the changes which it "believes will simplify compliance and eliminate any unnecessary recordkeeping requirements." 49 FR 5498, at 5511 (February 13, 1984). It is important to recognize that this modification was made in the recordkeeping requirements, not the monthly leverage customer account statement section. Similarly, proposed Rule 31.14(c)(3) would have required an LTM to keep:

A daily record or journal which will show separately for each leverage customer by type of leverage commodity and contract, complete details of all leverage transactions executed on that day, including the person for whom such transaction was undertaken, the type of leverage commodity and contract, the number of leverage contracts, the transaction identification number for each leverage contract, whether the transaction was an initial purchase, offset, liquidation or delivery, the total value of the leverage contract when initiated, offset or otherwise terminated, the total charges (initial, carrying and termination, as appropriate) for each transaction involving a leverage contract, and the amount of leverage customer funds deposited to margin the leverage contract. (Emphasis added.)

One commenter on proposed Rule 31.14(c)(3) opposed any requirement that an LTM show the carrying charges imposed on a leverage customer's account on a daily basis. Significantly, the commenter stated that monthly reflection of such charges could be acceptable. In light of this comment, the Commission did not adopt the requirement of daily reporting of carrying charges per transaction, in the belief that "this step will alleviate any unnecessary burden on LTMs without diminishing customer protection, particularly in view of the fact that such information is required to be maintained in the LTM's financial ledger (§ 31.14(c)(1)) and transaction record (§ 31.14(c)(2)) and is reported to the customer in the break-even calculation." 49 FR 5498, at 5510. Thus, the Commission did not abandon the concept of calculating and reporting carrying charges on a contract-by-contract basis when it did not adopt the language in Rule 31.14(c)(3) highlighted above, because it felt that information would be recorded pursuant to other parts of Rule 31.14.

In conclusion, the Commission believes that the interim final regulations currently require LTMs to calculate and record carrying charges on each leverage contract. These regulatory requirements make moot the objections of certain commenters to proposed Rule 31.26 on the ground that profit and loss cannot be measured on a contract-by-contract basis. However, the Commission has determined to provide the LTMs with a period within which to come into compliance with the requirement to report the carrying charge on each contract on the monthly leverage customer account statement, if they are not already doing so. All LTMs must be in compliance by January 1, 1986 and the January monthly statements distributed in February 1986 must set forth carrying charges on a contract-by-contract basis. The

Commission also believes that January 1, 1986 should be the target date by which LTMs complete their preparations for filing their first quarterly report for the last quarter of 1985, beginning October 1, 1985, with the report for the last quarter of 1985 due no later than January 23, 1986. The Commission's automated data processing staff will work with the firms to develop the appropriate format and coding structure.

The information which is required in the quarterly report is set forth in Rule 31.26(a). Every leverage contract which was closed out during the quarter, whether by repurchase, resale, liquidation or settlement by delivery, must be listed.¹² The data required with respect to each such contract includes identifying information such as the leverage commodity and contract involved, whether the contract was long or short, and the method of close-out. The dates the contract was entered into and closed out must be included, as well as the relevant prices at each date. The leverage customer account identification number, whether the customer had a commercial or noncommercial leverage account, and whether the customer was the owner or holder of a proprietary leverage account also must be included.

For any leverage contract which is closed out by repurchase, resale or liquidation, the LTM must report the profit or loss incurred by the leverage customer on the contract.¹³ In the case of a long leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the leverage transaction merchant's bid price at the time of repurchase or liquidation, the total value of the contract based on the ask price at which the contract was entered into, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial, carrying and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage

¹² No information will be required with respect to leverage contracts closed out by rescission. An LTM's monthly report must include the number of leverage contracts rescinded during the month and the Commission requires that a leverage customer can only be assessed actual price losses from the time of entering into the contract until rescission. Rule 31.16(f) (17 CFR 31.16(f) (1985)), which has been redesignated as Rule 31.16(a)(6), and Rule 31.23 (17 CFR 31.23 (1985)).

¹³ No information is required with respect to leverage contracts settled by delivery, since the ultimate profit or loss to the leverage customer in such cases depends on the amount which the leverage customer obtains upon sale of the delivered commodity, or the amount which the leverage customer paid to obtain the commodity in order to make delivery, in commercial or retail channels.

customer, in connection with the leverage contract. In the case of a short leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the bid price at which the contract was entered into, the total value of the contract based on the leverage transaction merchant's ask price at the time of resale or liquidation, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, including carrying charges, in connection with the leverage contract. A positive difference will indicate a profit and a negative difference will indicate a loss.

VIII. Order of Liquidation of Leverage Contracts

The Commission requested comment on whether it should adopt a rule specifying that leverage contract positions must be liquidated in declining order of loss, beginning with the position reflecting the greatest loss first. The regulations presently require that an LTM simply disclose the order in which leverage contracts will be liquidated pursuant to a margin call. Rule 31.11(a)(2)(vi). The Disclosure Documents initially filed with the Commission reveal that not all LTMs and applicants are liquidating leverage contracts in declining order of loss.

Two commenters addressed the proposal and both opposed it. One commenter, an applicant for registration as an LTM which currently utilizes the order of liquidation being proposed by the Commission (*i.e.*, declining order of loss, beginning with the position with the greatest loss), stated that the Commission should not adopt any requirement concerning mandatory liquidation sequence. This commenter stated that an LTM should have the right to liquidate undermargined positions in any order it sees fit, subject to disclosure of the sequence it will employ, and that the Commission lacks the statutory authority to require a liquidation sequence.

The other commenter, an LTM currently liquidating the most recently established leverage contract first because it claims the liquidation of the recently established leverage contract is least likely to have an adverse effect on its leverage customers, also opposed the adoption of the proposed rule. This commenter stated that the adoption of the rule would not be in the interest of the majority of leverage customers, because it may result in adverse federal

tax consequences to the customer. This commenter further claimed that the order of liquidation is unlikely to have a significant effect on the equity of a customer's account because "[i]n almost every case where a customer's account is in a liquidation position, the leverage customer is losing on all his open positions." This commenter further claimed that it will be difficult, costly and time consuming to identify the contract in the account which has the greatest loss and should be liquidated first under the proposal. This commenter asserts that, under the proposed method of liquidation, "it is very unlikely that a leverage customer with many open positions could look at his most recent account statement and be able to determine which leverage contract would be first to be liquidated" and that the account executive, when making a margin call, "would not be able to advise the customer as to the exact consequences of failure to meet the [margin] call."

The Commission has carefully reviewed the comments but is not persuaded by them. Accordingly, the Commission has determined to adopt a rule specifying that leverage contracts must be liquidated in declining order of loss, beginning with the contracts with the greatest loss first. The Commission notes that two of the three leverage firms employ the liquidation sequence being adopted. The Commission is concerned that any liquidation sequence other than that being adopted may be disadvantageous to the customer. The Commission believes that in a liquidation situation, that position which reflects the greatest loss and thus most contributes to the customer being undermargined should be liquidated first. Accordingly, the Commission has determined to adopt new Rule 31.18(d).

The Federal Register notice wherein the Commission requested comments on this issue referenced Rule 31.18(b), which provides for forced liquidations without prior notice of the customer. The Commission believes that new Rule 31.18(d) should apply to all forced liquidation situations, not just those covered by Rule 31.18(b). Accordingly, the Commission in adopting this amendment is also making clear that Rule 31.18(d) applies to all parts of Rule 31.18, not just Rule 31.18(b). The Commission believes that this application is technical in nature, that the same comments made regarding the proposal would also apply to its application to all of Rule 31.18 (and the Commission is not persuaded by those comments), and that the extension is in the public interest.

IX. Related Matters

A. Regulatory Flexibility Act

Adoption of these rules and rule amendments would not appear to affect a substantial number of small firms. There are only three applicants for registration as an LTM, and until the Commission lifts its temporary moratoria on the entry of new firms into the leverage business (17 CFR 31.1 and 31.2 (1984)), it is unlikely that there will be any additional applicants. In addition, in light of the minimum financial requirements for an LTM,¹⁴ the Commission does not believe these rules and rule amendments will have a significant economic impact on a substantial number of firms which could be considered small entities for purposes of the Regulatory Flexibility Act.

Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1168 (5 U.S.C. 605(b) (1982)), the Chairman, on behalf of the Commission, certifies that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Since any requirement imposed by the amendments to Rule 31.11 and new Rule 31.26 would affect less than ten persons (*i.e.*, only the three applicants for registration as an LTM), the Paperwork Reduction Act does not apply. 44 U.S.C. 3502(4) (1982).

List of Subjects

17 CFR Part 31

Definitions, Minimum financial requirements, Repurchase and resale of leverage contracts, Disclosure, Segregation, Bid and ask prices and carrying charges, Reporting and recordkeeping requirements.

17 CFR Part 190

Bankruptcy, Definitions.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982), and pursuant to the authority contained in the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. 101 *et seq.* (1982), the Commission hereby amends Chapter I of Title 17 of

¹⁴In this context, the Commission has defined "small entity" for purposes of the Regulatory Flexibility Act so as not to include any futures commission merchant registered with the Commission. (47 FR 18618, April 30, 1982). The minimum financial requirements for FCMs, as set forth in Commission Rule 1.17, 17 CFR 1.17 (1985), are significantly lower than those for an LTM.

the Code of Federal Regulations as follows:

PART 31—LEVERAGE TRANSACTIONS

1. The authority citation for Part 31 is revised to read as follows:

Authority: 7 U.S.C. 12a and 23.

2. Section 31.4 is amended by revising paragraph (d) and by adding paragraph (e) to read as follows:

§ 31.4 Definitions.

(d) "Leverage customer" means any person who, directly or indirectly, enters into, purchases, sells, or otherwise acquires for value any interest in a leverage contract with, from or to a leverage transaction merchant: *Provided, however,* That an owner or holder of a proprietary leverage account as defined in paragraph (e) of this section shall not be deemed to be a customer within the meaning of § 31.11(a)-(j) and (l), § 31.12 and § 31.26, and such an owner or holder of such a proprietary leverage account shall otherwise be deemed to be a leverage customer within the meaning of all other sections of these rules.

(e) "Proprietary leverage account" means a leverage account carried on the books and records of an individual, a partnership, corporation or other type association (1) for one of the following persons, or (2) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such individual himself, or such partnership, corporation or association itself;

(ii) In the case of a partnership, a general partner in such partnership;

(iii) In the case of a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such partnership,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such partnership, or

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) In the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such individual, partnership, corporation or association whose duties include:

(A) The management of the business of such individual, partnership, corporation or association or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such individual, partnership, corporation or association, or

(D) The signing or co-signing of checks or drafts on behalf of such individual, partnership, corporation or association;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that, directly or indirectly, controls such individual, partnership, corporation or association;

(viii) A business affiliate that, directly or indirectly, is controlled by or is under common control with, such individual, partnership, corporation or association.

3. Section 31.9 is amended by revising paragraphs (a), (b)(2) and (b)(9) to read as follows:

§ 31.9 Minimum financial requirements.

(a) Each leverage transaction merchant must at all times maintain adjusted net capital equal to or in excess of \$2,500,000, plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the leverage transaction merchant which are uncovered, plus 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the leverage transaction merchant which are covered.

(b) * * *

(2)(i) The term "customer" means customer as defined in § 31.4(d);

(ii) The term "proprietary account" means a commodity futures, option or leverage account carried on the books of the applicant or registrant itself, or for general partners of the applicant or registrant; and

(iii) The term "noncustomer account" means a leverage account carried on the books of the applicant or registrant for a person which is not included in the definition of customer (as defined in paragraph (b)(2)(i) of this section) or

proprietary account (as defined in paragraph (b)(2)(ii) of this section);

* * *

(9) The safety factors set forth in § 1.17(c)(5) (viii) and (ix) of this chapter for undermargined commodity futures and commodity option customer and noncustomer accounts shall apply in a like manner to undermargined leverage customer and noncustomer accounts, respectively, and the term "leverage transaction merchant" shall be substituted for the terms "applicable boards of trade" or "clearing organization"; and

* * *

4. Section 31.10 is revised to read as follows:

§ 31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.

(a) No leverage transaction merchant shall offer to sell or sell a long leverage contract involving a leverage commodity to any leverage customer at any time when such leverage transaction merchant is not offering to repurchase from any of its leverage customers any long leverage contract, and is not offering to resell to any of its leverage customers any short leverage contract, involving the same leverage commodity previously sold or purchased by the leverage transaction merchant to or from a leverage customer.

(b) No leverage transaction merchant shall offer to purchase or purchase a short leverage contract involving a leverage commodity from any leverage customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract, and is not offering to repurchase from any of its leverage customers any long leverage contract, involving the same leverage commodity previously purchased or sold by the leverage transaction merchant from or to a leverage customer.

5. Section 31.11 is amended by revising the first two paragraphs and the sixth paragraph of the bold-faced statement contained in paragraph (a)(1), paragraph (a)(3), and paragraphs (k)(1)(ii) (E) through (P), by adding paragraphs (k)(1)(ii) (Q) through (T), by revising the introductory text of paragraph (k)(2), and by adding paragraph (k)(2)(ii) to read as follows. The introductory text of paragraph (a)(1) is shown for the convenience of the user and remains unchanged.

§ 31.11 Disclosure.

(a) * * *

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS AND FOREIGN CURRENCIES, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. A FILLED IN VERSION OF THE CUSTOMER CONFIRMATION STATEMENT REFLECTING A SINGLE TRANSACTION IN A REPRESENTATIVE LEVERAGE COMMODITY FOR A LONG LEVERAGE TRANSACTION AND A SHORT LEVERAGE TRANSACTION WHICH INCLUDES A FORMULA FOR CALCULATING AN ESTIMATE OF THE LEVERAGE CONTRACT'S BREAK-EVEN VALUE IS ATTACHED TO THIS DOCUMENT. THIS IS IN THE SAME FORMAT AS THE CONFIRMATION STATEMENT YOU WILL RECEIVE TO CONFIRM YOUR ACTUAL TRANSACTION. BE CERTAIN THAT YOU UNDERSTAND THE INFORMATION PROVIDED BY THIS STATEMENT BEFORE YOU ENTER INTO A LEVERAGE TRANSACTION.

YOU SHOULD ALSO UNDERSTAND THAT THE CHARGES FOR SIMILAR LEVERAGE CONTRACTS WHICH ARE REFLECTED ON THE FILLED-IN CONFIRMATION STATEMENT AS ESTIMATED MAY VARY AMONG LEVERAGE FIRMS, AND THAT SUCH FIRMS HAVE COMPLETE DISCRETION IN SETTING THEIR CHARGES AND THE PRICE OF THE LEVERAGE CONTRACTS THEY OFFER. PRIOR TO ENTERING INTO ANY LEVERAGE CONTRACT A PROSPECTIVE LEVERAGE CUSTOMER SHOULD COMPARE THE CHARGES AND PRICES OF SUCH FIRMS WITH EACH OTHER AND WITH THE COMMISSIONS FOR AND

PRICES OF FUTURES CONTRACTS TRADED ON DESIGNATED EXCHANGES.

THERE IS NO MARKET FOR THE LEVERAGE CONTRACT ITSELF OTHER THAN TO HAVE IT REPURCHASED BY OR RESOLD TO THE LEVERAGE TRANSACTION MERCHANT. A LEVERAGE TRANSACTION MERCHANT IS UNDER NO OBLIGATION TO OFFER TO REPURCHASE OR RESELL A LEVERAGE CONTRACT AT ALL TIMES, ALTHOUGH THE LEVERAGE TRANSACTION MERCHANT MUST OFFER TO REPURCHASE ANY LONG LEVERAGE CONTRACT PREVIOUSLY PURCHASED BY A LEVERAGE CUSTOMER AND MUST ALSO OFFER TO RESELL ANY SHORT LEVERAGE CONTRACT PREVIOUSLY SOLD BY A LEVERAGE CUSTOMER AT ANY TIME DURING WHICH THE LEVERAGE TRANSACTION MERCHANT IS OFFERING TO ENTER INTO NEW LONG OR SHORT LEVERAGE CONTRACTS WITH CUSTOMERS INVOLVING THE SAME LEVERAGE COMMODITY. AS NOTED ABOVE, HOWEVER, A LEVERAGE TRANSACTION MERCHANT HAS COMPLETE DISCRETION IN SETTING THE PRICE AND ANY CHARGES RELATED THERETO.

(3) A filled-in version of the customer Confirmation Statement in the format specified by the Commission for a representative single long leverage contract and a representative single short leverage contract which includes a formula which can be used to estimate the break-even price.

(k) . . .

(1) . . .

(ii) . . .

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transaction merchant's ask price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total unpaid balance for this transaction;

(G) The total initial charges for the transaction;

(H) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(I) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(J) The current equity in the individual customer's account as of the date of this

transaction, but excluding this transaction;

(K) The total variable carrying charges to be billed each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(L) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(M) The total termination charges incurred if the contract is repurchased, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(N) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(O) Any special charges associated with liquidating the transaction, based on charges prevailing at the time the contract is entered into;

(P) The total delivery charges incurred if the customer takes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(Q) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus the bid-ask spread plus the initial charges plus any other charges plus the termination charges plus the carrying charges for the period the contract is intended to be held open;

(R) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(T) The commercial or retail cash price series filed in accordance with § 31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis; and

(2) Within 24 hours after entry into a short leverage contract with a customer, each leverage transaction merchant shall furnish to such customer by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(ii) The following additional information:

(A) The date the leverage contract was entered into;

(B) The transaction identification number;

(C) The name of the leverage commodity;

(D) The expiration date of the leverage contract;

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transactions merchant's bid price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total initial charges for the transaction;

(G) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(H) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(I) The current equity in the individual customer's account as of the date of this transaction, but excluding this transaction;

(J) The total variable carrying charges to be credited each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(K) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(L) The total termination charges incurred if the contract is resold, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(M) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(N) Any special charges associated with liquidating the transaction, based on charges prevailing at the time the contract is entered into;

(O) The total delivery (including assay) charges incurred if the customer makes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(P) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus carrying charges for the period the contract is intended to be held open, minus the bid-ask spread, minus the initial charges, minus any other charges, minus the termination charges;

(Q) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(R) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The commercial or retail cash price series filed in accordance with § 31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis; and

6. Section 31.12 is amended by revising paragraph (e) to read as follows:

§ 31.12 Segregation.

(e) The provisions of paragraphs (a) and (b) of this section shall not operate to prevent any person that uses leverage customer funds to purchase government obligations as described therein from receiving and retaining as its own any increment or interest resulting from such government obligations: *Provided, however, That the futures commission merchant fulfills its obligation to pay carrying charges on a short leverage contract, including any margin deposit made in connection with such a contract, in accordance with § 31.25(b).*

7. Section 31.18 is amended by adding paragraph (d) to read as follows:

§ 31.18 Margin calls.

(d) Leverage contracts liquidated by a leverage transaction merchant because of a margin deficiency must be liquidated in declining order of loss, commencing with the leverage contract with the greatest loss.

8. Section 31.25 is added to read as follows:

§ 31.25 Bid and ask prices; carrying charges.

(a) A leverage transaction merchant must use the same bid price at any particular point in time to purchase a leverage contract from a leverage customer (initiation of a short transaction) and to repurchase a leverage contract from a leverage customer (close-out of a long transaction), and a leverage transaction merchant must use the same ask price at any particular point in time to sell a leverage contract to a leverage customer (initiation of a long transaction) and to resell a leverage contract to a leverage customer (close-out of a short transaction), with respect to contracts involving the same leverage commodity.

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short

leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however, That this paragraph shall not apply to leverage contracts on those leverage commodities defined in § 31.4(g)(3).*

9. Section 31.26 is added to read as follows:

§ 31.26 Quarterly reporting requirement.

(a) Each leverage transaction merchant must file, in accordance with paragraph (b) of this section, a quarterly report with the Commission's headquarters office in Washington, D.C. by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

- (1) The leverage commodity and contract involved;
- (2) Whether a long or short leverage contract was involved;
- (3) The date the leverage contract was entered into;
- (4) The maturity date of the leverage contract at initiation;
- (5) The price at which the leverage contract was entered into;
- (6) Whether the leverage contract was repurchased, resold, liquidated or settled by delivery;
- (7) The date the leverage contract was repurchased, resold, liquidated or settled by delivery;
- (8) The price at which the leverage contract was repurchased, resold or liquidated;
- (9) The leverage customer account identification number;
- (10) Whether the leverage customer had a commercial or noncommercial leverage account;
- (11) Whether the leverage customer was the owner or holder of a proprietary

leverage account as defined in § 31.4(e); and

(12) The profit or loss incurred by the leverage customer on the contract. In the case of a long leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the leverage transaction merchant's bid price at the time of repurchase or liquidation, the total value of the contract based on the ask price at which the contract was entered into, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial, carrying and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, in connection with the leverage contract. In the case of a short leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the bid price at which the contract was entered into, the total value of the contract based on the leverage transaction merchant's ask price at the time of resale or liquidation, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, in connection with the leverage contract.

(b)(1) Each leverage transaction merchant must file with the Commission or its designee, within 30 days of the

date of publication of this section in the **Federal Register**, a proposed format and coding structure for the submission of the information required by paragraph (a) of this section on compatible data processing magnetic tape. Within 20 days after receipt of such proposal, the Commission or its designee shall: (i) Notify the leverage transaction merchant of the approval or disapproval of the proposed format and coding structure; or (ii) indicate to the leverage transaction merchant that additional time is required to analyze the proposal, in which case the amount of time needed will be specified. If a proposed format and coding structure is disapproved by the Commission or its designee, acceptable changes to the proposed format will be specified which must be adopted by the leverage transaction merchant, unless an alternative proposal addressing the disapproved items is filed within 10 days after notification of such disapproval.

(2) Unless otherwise approved by the Commission or its designee, the information required by paragraph (a) of this section must be submitted on compatible data processing magnetic tape, using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise required by the Commission or its designee, the information required by paragraph (a) must also be accompanied by a complete and accurate printout of information, which

shall be signed by the leverage transaction merchant if a sole proprietorship, by a general partner of a leverage transaction merchant which is a partnership, by a chief executive officer or the chief financial officer of a leverage transaction merchant which is a corporation, or by a person designated by the leverage transaction merchant for such purpose provided such designee has been identified as such in writing to the Commission.

PART 190—BANKRUPTCY

10. The authority citation for Part 190 is revised to read as follows:

Authority: 7 U.S.C. 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23 and 24, and 11 U.S.C. 362, 546, 548, 556 and 761-766.

11. Section 190.01 is amended by revising paragraph (bb) to read as follows:

§ 190.01 Definitions.

(bb) "Non-public customer" means any person enumerated in § 1.3(y) or in § 31.4(e) of this chapter, who is defined as a customer under paragraph (k) of this section.

Issued in Washington, D.C. on August 29, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Note.—The following forms will not appear in the Code of Federal Regulations.

BILLING CODE 6351-01-M

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT PURCHASED FROM A LEVERAGE TRANSACTION ARE CALCULATED BY SUBTRACTING THE ASK PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCINDING FROM THE ASK PRICE AT WHICH THE LEVERAGE CONTRACT WAS PURCHASED AND MULTIPLYING THE RESULT BY THE LEVERAGE RATIO. THIS CONFIRMATION SENDS A TELEPHONE TO (name and address of LHM) OR YOU MAY TELEPHONE (name of LHM AT (telephone number)). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE.

**CONFIRMATION STATEMENT FOR A CONTRACT
INITIALLY PURCHASED BY A CUSTOMER**

Date: _____ Transaction I.D. Number: _____
Commodity: _____ Contract Expiration: _____

TOTAL INVESTMENT

Total Value of Contracts Purchased \$ _____ \$ (Ask Price) per (Contract Unit) X (No. of Units) X (No. of Contracts)

TOTAL UNPAID BALANCE \$ _____

FOR THIS TRANSACTION

INITIAL FEES AND MARGIN

Total Initial Charges \$ _____

Total Initial Margin +\$ _____ % of Value of Contract Purchased

Total Amount Due Now To Initiate This Transaction +\$ _____

(Outstanding If Paid)

CURRENT EQUITY IN ACCOUNT

Excluding this Transaction \$ _____

SCHEDULE OF CHARGES 1/

Current Estimate of Variable (Specify Period) Carrying Charges to be Billed Starting (date) \$ _____ % Annual Rate

CURRENT ESTIMATED SETTLEMENT COSTS

To Have LHM Repurchase Total Current Bid/Ask Spread \$ _____

Other Charges +\$ _____ a \$ _____ Total

Special Charges if Liquidated \$ _____

Current Delivery Charges \$ _____

ESTIMATE OF CONTRACT VALUE TO BREAK-EVEN = INITIAL CONTRACT VALUE + BID-ASK SPREAD + INITIAL CHARGES + OTHER CHARGES + TERMINATION CHARGES + CARRYING CHARGES FOR THE PERIOD THE CONTRACT IS INTENDED TO BE HELD OPEN.

OTHER INFORMATION

Total Minimum Margin \$ _____ % of Total Value of Contracts Purchased

Total Maintenance Margin \$ _____ % of Total Value of Contracts Purchased

PRICE SERIES TO EVALUATE CONTRACT

SOURCE OF PRICE SERIES:

1/ These charges and margins are subject to change. In addition, some of these charges are based on prices prevailing at the time the contract is terminated. See Disclosure Document. The customer will be notified of such changes by separate notice of notification.

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT SOLD TO A LEVERAGE TRANSACTION ARE CALCULATED BY SUBTRACTING THE BID PRICE AT WHICH THE LEVERAGE CONTRACT WAS SOLD TO THE LEVERAGE TRANSACTION AND MULTIPLYING THE RESULT BY THE LEVERAGE RATIO. THIS CONFIRMATION SENDS A TELEPHONE TO (name and address of LHM) OR YOU MAY TELEPHONE (name of LHM AT (telephone number)). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE.

**CONFIRMATION STATEMENT FOR A CONTRACT
INITIALLY SOLD BY A CUSTOMER**

Date: _____ Transaction I.D. Number: _____
Commodity: _____ Contract Expiration: _____

Total Value of Contracts Sold \$ _____ \$ (Bid Price) per (Contract Unit) X (No. of Units) X (No. of Contracts)

INITIAL FEES AND MARGIN

Total Initial Charges \$ _____

Total Initial Margin -\$ _____ % of Value of Contract Sold

Total Amount Due Now To Initiate This Transaction -\$ _____

(Outstanding If Paid)

CURRENT EQUITY IN ACCOUNT

Excluding this Transaction \$ _____

SCHEDULE OF CHARGES 1/

Current Estimate of Variable (Specify Period) Carrying Charges to be Billed Starting (date) \$ _____ % Annual Rate

CURRENT ESTIMATED SETTLEMENT COSTS

To Have LHM Resell Total Current Bid/Ask Spread \$ _____

Other Charges +\$ _____ a \$ _____ Total

Special Charges if Liquidated \$ _____

Current Delivery Charges \$ _____

ESTIMATE OF CONTRACT VALUE TO BREAK-EVEN = INITIAL CONTRACT VALUE + CARRYING CHARGES FOR THE PERIOD THE CONTRACT IS INTENDED TO BE HELD OPEN - BID-ASK SPREAD - INITIAL CHARGES - OTHER CHARGES - TERMINATION CHARGES.

OTHER INFORMATION

Total Minimum Margin 1/ \$ _____ % of Total Value of Contracts Sold

Total Maintenance Margin 1/ \$ _____ % of Total Value of Contracts Sold

PRICE SERIES TO EVALUATE CONTRACT

SOURCE OF PRICE SERIES:

1/ These charges and margins are subject to change. In addition, some of these charges are based on prices prevailing at the time the contract is terminated. See Disclosure Document. The customer will be notified of such changes by separate notice of notification.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Nutra-Blend Corp., providing for the manufacture of 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850, is the sponsor of a supplement to NADA 122-158 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558, is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(71) to read as follows:

§ 558.625 Tylosin.

(b) * * *
 (71) To 050568: 4 grams per pound, paragraph (f)(1)(vi)(a) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

Dated: August 30, 1985.

Marvin A. Norcross,
 Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-21252 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Referral of Cases

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: As part of its continuing effort to enhance equity among similarly situated offenders, as well as to assist in relieving prison overcrowding, the Parole Commission added a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence. Due to the extremely small number of cases which have been referred to the sentencing court for reduction by the Bureau of Prisons and to the amount of staff time consumed to identify, prepare and process the cases, the Director of the Bureau of Prisons has requested that the Parole Commission and the Bureau jointly discontinue the program. Pursuant to that request and after receipt of public comment, the Parole Commission is amending its rules by deleting § 2.62, Recommendation for

Reduction of Minimum Sentence, from 28 CFR Part 2.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: As part of the Parole Commission's response to a request from the Bureau of Prisons and Department of Justice for assistance in addressing the problem of federal prison overcrowding and pursuant to its mandate to provide consistency in release dates for similarly situated offenders by reducing unwarranted sentence disparity, the Commission published a proposed rule in the *Federal Register* (48 FR 22949, May 23, 1983) designed to relieve prison overcrowding by referring selected cases to the Bureau of Prisons which then might petition the sentencing court for reduction of judicially imposed minimum sentences. After receiving favorable public comment, the Parole Commission published a final rule in the *Federal Register* (48 FR 44525, September 29, 1983) promulgating § 2.62 of 28 CFR Part 2, effective October 1, 1983.

The rule involved a joint effort by the Parole Commission and the Bureau of Prisons (1) to identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but who must remain in custody beyond the maximum of the applicable guideline range because of a judicially imposed minimum sentence and (2) to seek a reduction of the minimum sentence in such cases through the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g), the Director of the Bureau of Prisons may at any time petition the sentencing court to reduce a minimum term and the court can act on such application without convening a hearing. As contemplated by the rule, the Parole Commission was to review and refer to the Bureau of Prisons those cases that the Commission believed met the criteria set forth above.

Pursuant to this rule, the Parole Commission first reviewed 1,473 files of prisoners previously given presumptive parole dates at the completion of the minimum sentence for possible sentence reduction recommendations to the Bureau of Prisons. After hearing examiner and Regional Commissioner consideration and review, 401 cases, where the disparity between the minimum sentence and the maximum of the applicable guideline range appeared

unwarranted, were identified and forwarded to the Bureau. The remainder were rejected either because of insufficient time remaining on the sentence to fully process the motion or because there existed in the files aggravating factors that could have caused the Commission itself to go above the applicable guidelines. The Parole Commission next began reviewing current files for possible recommendation, identifying another 171 cases for reduction recommendation. If all of these 572 recommendations had been accepted by the Bureau and, eventually, by the sentencing judge, a savings of 9,591 prisoner incarceration months or about 600 prisoner incarceration years could have been realized.

According to data supplied by the Bureau of Prisons, since December 1983, only 74 of the 572 cases submitted by the Parole Commission made it through the Bureau's processing for consideration by its Director. He denied 68 of these, approving 6 for further review by the appropriate U.S. attorney. Three of these six were referred to the sentencing judges after U.S. attorney review, with the sentencing judge actually reducing the minimum in only two cases.

As a result, in January 1985, the Director of the Bureau of Prisons, citing the extremely small number of cases actually referred to sentencing courts and the amount of staff time involved in identifying, preparing and processing the cases, proposed that the program be discontinued. The Parole Commission sought public comment on whether to accept that recommendation, publishing a proposed rule to delete 28 CFR 2.62 in the *Federal Register* (50 FR 24234, June 10, 1985).

The Parole Commission received three (3) comments on the proposed rule, one from an inmate, one from a private citizen, and one submitted by the University of Southern California Post-Conviction Justice Project.

The inmate argued against deletion of the section, stating that it would be "very debilitating and a grave injustice to the many federal prisoners who are definitely rehabilitated" to deny parole solely because of the judicially imposed minimum sentence. Additional comments from the inmate related to the role of the Bureau of Prisons in this process rather than that of the Parole Commission. The private citizen, on the other hand, supported the proposal, arguing that the court was the proper body to determine sentence length rather than a "professionally untrained bureaucratic body." She noted further her view that prison overcrowding was

not a sufficient justification for consideration of early release.

The attorneys who wrote on behalf of the U.S.C. Post-Conviction Justice Project argued that the elimination of the section would be "premature and thus ill-advised." After reviewing the implementation of § 4205(g) and its legislative history, the commenters concluded that there is a need to review "the manner in which the Bureau of Prisons has handled the Commission's referrals to determine whether the Bureau of Prisons has abused its discretion by deviating from its published criteria and has, therefore, failed to carry out the Congressional intent expressed in the enactment of § 4205(g)." They urged the Commission to wait until there is adequate opportunity for public comment on the Bureau's implementation of this provision.

The Parole Commission, after reviewing these comments, accepted the recommendation of the Director of the Bureau of Prisons to delete § 2.62 from its rules at this time.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.62 [Removed]

2. 28 CFR 2.62, Recommendation for Reduction of Minimum Sentence, is removed.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21323 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules to require all parolees (and mandatory releases) to satisfy outstanding court orders as a condition

of their release, adding this condition to its Conditions of Release, 28 CFR 2.40. While mandated to add this condition as regards fines by the provisions of the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596, and as regards restitution orders by the provisions of the Victim and Witness Protection Act of 1982, Pub. L. 97-291, the Parole Commission additionally will require the satisfaction of court costs and assessments, and court ordered child support or alimony payments. Furthermore, since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), these changes will serve to clarify those existing obligations rather than resulting in totally new or additional requirements. To facilitate the payment of these obligations, the Parole Commission will require the parolee to provide relevant financial information and to cooperate, when appropriate, in the establishment of an installment payment plan. Other related amendments are being made to clarify and conform language to the terms of this new release condition. Finally, the Parole Commission is amending another condition of release, 28 CFR 2.40(a)(5), to clarify the parolee's obligations when reporting to his probation officer.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION:

Currently the U.S. Parole Commission imposes several conditions on every grant of parole, conditions deemed necessary to provide adequate supervision and to protect the public welfare. The Commission is amending its set of conditions at 28 CFR 2.40 by adding the condition that parolees make a diligent effort to satisfy outstanding fines and other court ordered financial obligations such as restitution orders, court costs and assessments, and child support and alimony and, to that end, that they supply financial information and develop installment payment plans. The new condition as to fines is required by the Criminal Fine Enforcement Act of 1984, Pub. L. 98-596 and the Parole Commission is lending equal weight to the enforcement of these other court ordered financial obligations, as it did previously with restitution orders, by making their satisfaction a condition of parole.

In regard to this new condition of parole, several procedures will apply. If the parolee satisfactorily demonstrates that he cannot immediately satisfy the outstanding obligation in full, he and the U.S. Probation Officer will develop a written plan for the payment of the fine, restitution order, etc. The plan will include, among other things, a payment schedule and the amount to be paid at each installment. It will include also the following clause: "This plan, and the obligations described herein, are part of the conditions of my parole." The parolee will supply all financial information and records necessary to the development of the plan and will sign the plan, along with the U.S. Probation Officer. A copy of the signed plan will be forwarded to the Parole Commission.

As to the payment schedule and the amounts to be paid at each installment, the plan will include any relevant court ordered installment payment schedule. If no such installment payment schedule exists, one will be developed that takes into account, among other things, the amount of the fine [restitution order, etc.], any interest and penalties due as well as the parolee's employment status, earning ability, financial resources, and the economic burden that the payment of the obligation will impose on the parolee or his dependents. Where feasible, the installment payment term for fines and restitution orders should not exceed two years. When the parolee has an outstanding restitution order in addition to a fine or other financial obligation, the plan will give precedence to the satisfaction of the restitution order.

If the parolee refuses to accept the terms of the plan in general, refuses to accept the installment payment schedule, and/or refuses to sign the plan, the Parole Commission will then resolve any outstanding disputes as to terms and installment payment schedules, completing the plan as necessary and making the terms and schedules contained therein themselves a parole condition. Any changes to or modifications of the plan will be reduced to written form and signed by the parolee and the U.S. Probation Officer. A copy of the signed change or modification will be forwarded to the Parole Commission.

And, finally, if the parolee does not make diligent effort to make the payments according to the schedule in the plan, the U.S. Probation Officer will report such failure to the Parole Commission as a violation of the conditions of parole.

As a conforming amendment, the Parole Commission is deleting 28 CFR

2.7(b)(1). That subsection deals with unsatisfied orders of restitution automatically becoming a condition of release. The new condition renders this part of the subsection duplicative and thus unnecessary. The subsection also requires the inclusion of a payment plan. The Parole Commission will retain that requirement, but, for clarity, is amending the language and adding it to 28 CFR 2.33 (Release Plans) as new §2.33(d).

As a second conforming amendment, the Parole Commission is amending the language of 28 CFR 2.7(b)(3), to delete it from 28 CFR 2.7 and to add it to 28 CFR 2.52 as new §2.52(e). As presently drafted, the subsection deals with factors to be considered in determining whether to revoke parole for noncompliance with a condition of restitution. The amendment now requires that the same factors be considered in determining revocation for non-compliance with a condition of fine, court costs or assessment, and/or court ordered child support or alimony payment. The new subsection becomes part of 28 CFR 2.52 (Revocation Decisions). Finally, present 28 CFR 2.7(b)(2) is redesignated 28 CFR 2.7(b).

A proposed rule incorporating substantially all the above discussed amendments was published in the *Federal Register* (50 FR 24235, June 10, 1985). The Parole Commission received three (3) responses from the public on the proposed changes. A private citizen commended the Commission for the planned amendment citing it as "a much needed adjunct in the rehabilitation of criminals" and noting that it would "aid the parolee in developing a sense of social responsibility. And a Chief Probation Officer wrote that he was "sure the proposed rule will be a good one which will more clearly define the responsibility." He saw "no problem" with it.

The third comment was received from the University of Southern California Post-Conviction Justice Project. The attorneys representing the U.S.C. Post-Conviction Justice Project argued that the Commission should "distinguish between fines and restitution orders on the one hand, and other court ordered financial obligations" on the other. The former are related to the parolee's criminal conviction and punishment and are appropriate, they said, for Parole Commission purposes. The latter result from separate and unrelated judicial proceedings and the Commission's involvement with them will be "entirely unnecessary and superfluous" as other judicial authorities are in a better position to monitor their satisfaction. They stated also that the proposed amendment "would criminalize an

entire range of civil obligations" and "will discriminate against certain civil litigants."

The commenters objected further to requiring parolees to provide information relevant to the payment of the obligations. They felt that additional safeguards were necessary here to protect against an abuse of discretion. Finally, they objected to the "deliberately evading or refusing" standard in proposed §2.52(e). They recommended that a parolee should "only face revocation for not meeting a financial obligation if he or she is found to have willfully failed to make required payments and to have had the financial ability to do so."

The Parole Commission, after considering the comments received, has determined that it is appropriate to proceed with the rule as proposed. Since current conditions of release already obligate a parolee to "not violate any law" (28 CFR 2.40(a)(6)) and to "support his legal dependents" (28 CFR 2.40(a)(8)), these amendments serve to clarify those existing obligations rather than resulting in totally new or additional requirements. Further, the Commission has determined that the "deliberately evading or refusing" standard is functionally equivalent to the "willful" standard recommended by one of the comments. For clarity, however, the Commission is substituting "court costs and assessment" for "other court ordered financial obligation of a similar nature" on the list of covered financial obligations.

The Parole Commission also is amending the release condition at 28 CFR 2.40(a)(5) in order to clarify the parolee's obligations when reporting to his probation officer. To parallel the existing requirement in subsection 2.40(a)(5) that parolees make complete and truthful written reports to probation officers, the subsection is amended to require completeness and truthfulness at any time the parolee is reporting to his probation officer.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2.

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40, *Conditions of Release*, is amended by revising paragraph (a)(5) to read as follows:

(a) * * *

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer, at other times as the probation officer directs, providing complete and truthful information.

3. 28 CFR 2.40, *Conditions of Release*, is further amended by adding new paragraph (a)(13) to read as follows:

§ 2.40 Conditions of Release.

(a) * * *

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested, by his Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Probation Officer in establishing an installment payment schedule.

§ 2.7 [Amended]

4. 28 CFR 2.7(b)(1) and 2.7(b)(3) are removed and 28 CFR 2.7(b)(2) is redesignated 28 CFR 2.7(b). Also 28 CFR 2.33, *Release Plans*, is amended by adding new paragraph (d) to read as follows:

§ 2.33 Release Plans.

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

5. 28 CFR 2.52, *Revocation Decisions*, is amended by adding new paragraph (e) to read as follows:

§ 2.52 Revocation Decisions.

(e) In determining whether to revoke parole for non-compliance with a condition of fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may

have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21325 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Information Considered

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rules at 28 CFR 2.19 (Information Considered) to facilitate and clarify the procedure by which material concerning a prisoner is submitted for consideration by the Commission. The amendment to § 2.19 adds new subsection 2.19(b)(2) which requires that the material containing the information to be considered be forwarded sufficiently in advance so as to be received by the Commission no later than the first day of the month preceding the month of the docket. Also added is new subsection 2.19(b)(3) which states that, if a large amount of material is first submitted at the time of the hearing and the hearing panel concludes that it is not feasible to read the information submitted at that time, the person submitting the information will be permitted to briefly summarize the material. Further, the submitted material will become part of the record to be considered by the Commission upon review of the panel's recommendation. As a conforming amendment, 28 CFR 2.19(b) will become § 2.19(b)(1).

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: In making a parole or reparole determination, the Commission considers a number of reports and other documents concerning the prisoner. It will also take into consideration additional relevant information concerning the prisoner, including information submitted by the prisoner or by other interested persons. The rules

governing the information so considered are at 28 CFR 2.19.

Occasionally, at the hearing, a prisoner or his representative will submit for the first time voluminous material concerning the prisoner to be considered by the panel. In such instances, it is generally impossible for the examiner to read all the material submitted without seriously disturbing the hearing schedule.

To remedy this situation and to ensure that the information contained in the submitted material receives appropriate attention and review, the Commission is amending its rule to provide that material to be considered concerning the prisoner should be forwarded to the Commission sufficiently in advance so as to be received by the Commission no later than the first day of the month preceding the month of the docket (i.e., if the hearing is scheduled for an August docket, the material should be received by the Commission by July 1). This new requirement coincides with the time schedule that the institutions must follow when forwarding information to the Commission for pre-hearing reviews. This procedure is contained in new subsection 2.19(b)(2).

Further, the new subsection contains a procedure for handling material that is first submitted at the hearing. If that material contains more than six (6), double-spaced, letter-sized pages, and the panel concludes that it is not feasible to read the material at that time, the person submitting the material will be permitted to briefly summarize the material. Also, the material submitted, in its entirety, will become part of the record to be considered by the Regional Commissioner upon review of the panel's recommendation.

As an additional conforming amendment, the present subsection 2.19(b) will be redesignated 2.19(b)(1).

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.19, *Information considered*, is amended to redesignate (b) as (b)(1) and to add two new

paragraphs, (b)(2) and (b)(3) to read as follows:

§ 2.19 Information considered.

(b)(1) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(2) To permit adequate review of information concerning the prisoner, materials submitted to the Commission should be received by the Commission no later than the first day of the month preceding the month of the scheduled hearing docket.

(3) If material of more than six (6), double-spaced, letter-sized pages is first submitted at the time of the hearing and the hearing panel concludes that it is not feasible to read all the material at that time, the person submitting the material will be permitted to summarize it briefly at the hearing. The summarized material, in its entirety, will become part of the record to be considered by the Commission in its review of the panel's recommendation.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-21324 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending 28 CFR by deleting several items that are obsolete or unnecessary. Two of the sections (28 CFR 2.9(b) (Study Prior to Sentencing); 28 CFR 2.16(d) (Parole of Prisoner in State, Local, or Territorial Institution)) involve the Federal Youth Corrections Act, legislation that was repealed by the Comprehensive Crime Control Act of 1984 (Pub. L. 98-473). A third item (28 CFR 2.43(a)(2) (Early Termination)) also involves the Federal Youth Corrections Act and contains an obsolete provision. The Parole Commission is amending that subsection by deleting that part that deals with youth offenders sentenced to a term of one year or less and by adding language to clarify that the retained part of the subsection deals with youth offenders sentenced to a term of more

than one year. A fourth item involves 28 CFR 2.2(e) (Eligibility for Parole: Adult Sentences). The Parole Commission is amending that subsection by deleting that part that deals with sentences of six months to 1 year that were imposed prior to May 15, 1976. That part of the subsection is deemed obsolete. Should there be cases remaining in the system to which the deleted provisions are applicable, the cases will continue to be handled under the provisions existing prior to the deletion. Finally, as a conforming amendment, 28 CFR 2.9(a) is redesignated § 2.9.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: In maintaining its rules, the Parole Commission makes amendments that reflect legislative developments and changes and makes deletions of materials that has become obsolete or unnecessary. Four such amendments are being accomplished at this time.

The first two amendments involve the Federal Youth Corrections Act, legislation that was repealed as part of the Comprehensive Crime Control Act of 1984 (Pub. L. No. 98-473). Subsection (b) of 28 CFR 2.9 (Study Prior to Sentencing) is the rule governing the Commission's role in reporting to the sentencing courts on the observation and study of youths committed pursuant to 18 U.S.C. 5010(e). Subsection (d) of 28 CFR 2.16 (Parole of Prisoner in State, Local, or Territorial Institution) is the rule governing the parole of Federal Youth Corrections Act offenders committed under 18 U.S.C. § 3401 and who are given commitments of six months or less. Since YCA was repealed, these subsections became obsolete and can be deleted. Should there be cases remaining in the system to which the deleted provisions are applicable, the cases will continue to be handled under the provisions existing prior to the deletion.

The third amendment also involves the Federal Youth Corrections Act. Subsection (a)(2) of 28 CFR 2.43 (Early Termination) contains the rule governing the early termination of supervision of youth offenders. The first clause of that subsection deals with youth offenders sentenced to terms of one year or less under 18 U.S.C. 3401(g). The repeal of the Federal Youth Corrections Act has made that clause obsolete and it can be deleted. While the remainder of the subsection also involves offenders sentenced under the Federal Youth

Corrections Act, the Parole Commission has a continuing responsibility for supervising those youth offenders sentenced before the repeal of the Act. The Parole Commission is amending the retained part of the subsection to clarify that that part deals with youth offenders sentenced to a term of more than one year.

Next, 28 CFR 2.2 (Eligibility for Parole: Adult Sentences) reflects the statutory provision that Federal prisoners serving a maximum of one year or less are not eligible for parole consideration by the Commission. However, the subsection states that, as an exception, Federal prisoners sentenced, prior to May 14, 1976, to a maximum of at least six months but not more than one year are eligible for parole consideration after service of one-third of such term. The Commission has determined that that exception is obsolete and may be deleted. Should there be cases remaining in the system to which this deleted provision is applicable, the cases will continue to be handled under the provision existing prior to the deletion.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.2, *Eligibility for Parole: Adult Sentences*, is amended by revising paragraph (e) to read as follows:

§ 2.2 Eligibility for Parole: Adult Sentences.

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission.

3. 28 CFR. 2.9, *Study Prior to Sentencing*, is revised to read as follows:

§ 2.9 Study Prior to Sentencing.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is

prepared and submitted directly by the United States Federal Prison System.

§ 2.16 [Amended]

4. 28 CFR 2.16, *Parole of Prisoner in State, Local, or Territorial Institution*, is amended by removing paragraph (d).

5. 28 CFR 2.43, *Early Termination*, is amended by revising paragraph (a)(2) to read as follows:

§ 2.43 Early Termination.

(a) * * *

(2) A committed youth offender sentenced to a term of more than one year may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

Dated: August 20, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 21326 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy amends its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has

determined that Landing Craft Air Cushion (LCAC) class amphibious vessels are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as landing craft air cushion vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Landing Craft Air Cushion (LCAC) class amphibious vessels are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with the 72 COLREGS: Rule 21(a), pertaining to the centerline positioning of the masthead light; Rule 21(b), pertaining to the positioning of the sidelights; Rule 22(b), pertaining to the range of visibility of the sidelights; Annex I, section 2(a)(i), pertaining to the height of the masthead light above the hull; Annex I, section 2(g), pertaining to the placement of the sidelights at a height above the hull not greater than three-quarters of that of the masthead light; and Annex I, section 3(b), pertaining to the placement of the sidelights at or near the sides of the vessel, without interfering with their special functions as landing craft air cushion vessels. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on LCAC-class amphibious vessels in a manner differently from that prescribed herein will adversely affect their ability to perform their functions as landing craft air cushion vessels.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: 33 U.S.C. 1605.

§§ 706.2 and 706.3 [Amended]

2. The authority citation following §§ 706.2 and 706.3 are removed.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following class of vessels to the list:

Vessel	Number	Distance in meters of forward masthead light below minimum required height; section 2(a)(i), annex I
LCAC (class).....	LCAC 1 through LCAC 100.....	* 6.51
LCAC (class).....	LCAC 1 through LCAC 100.....	* 7.94

* The permanent masthead light is 5.26 meters athwartship to port of centerline, 5.49 meters above the main deck.
* The temporary masthead light is 3.98 meters athwartship to starboard of centerline, 4.06 meters above the main deck.

2. Table Two of § 706.2 is amended by adding the following class of vessels to the list.

Vessel	Number	Masthead lights, distance to starboard of keel in meters; rule 21(a)	Forward anchor light, distance below light deck in meters; section 2(k), Annex I	Forward anchor light, number of; rule 30(a)(i)	Aft anchor light, distance below light deck in meters; rule 21(e), rule 30(a)(i)	Aft anchor light, number of; rule 30(a)(ii)	Side lights, distance below light deck in meters; section 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; section 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; section 3(b), Annex I
LCAC (class).....	LCAC 1 through LCAC 100.....	5.26 (Perm.)*							* 1.5
LCAC (class).....	LCAC 1 through LCAC 100.....	3.98 (Temp.)*							* 1.5

*The permanent masthead light is 5.26 meters athwartship to port of centerline, at frame 3, 5.49 meters above the main deck.

*The sidelights are on top of the port and starboard deckhouses 3.28 meters above the hull.

*The temporary masthead light is 3.98 meters athwartship to starboard of centerline 4.06 meters above the main deck.

3. Table Four of § 706.2 is amended by revising paragraph 14 to read as follows:

14. On LCAC-class amphibious vessels, full compliance with Rules 21(a), 21(b), and 22(b), and Annex I, section 2(a)(i), 72 COLREGS, cannot be obtained. Tables One and Two of section 706.2 provide the dimensions of closest possible compliance of LCAC-class amphibious vessels with the aforementioned rules. The following paragraph details the specific dimensions of closest possible compliance and the basis for certification by the Secretary of the Navy that full compliance with the aforementioned rules is not obtainable.

On LCAC-class amphibious vessels, there are permanent and temporary masts. The permanent masthead light is located 5.26 meters athwartship to port of centerline 5.49 meters above the hull. The temporary masthead light is located 3.98 meters athwartship to starboard of centerline 4.06 meters above the hull. The temporary masthead light is displayed in lieu of the permanent masthead light only when LCAC-class amphibious vessels are operating with amphibious assault vessels. When operating in this mode, the sidelights are displayed at a height greater than three-quarters of the height of the temporary masthead light. The sidelights are located on top of the port and starboard deckhouses to permit the required unobstructed arcs of visibility and are 3.28 meters above the hull, resulting in a vertical separation between those lights and the temporary masthead light of 0.78 meters. Because of the minimal vertical separation between the sidelights and the temporary masthead light and the luminous intensity of the temporary light, the sidelights on these vessels may not be distinguishable by the naked eye at the 2-mile range required by Rule 22(b).

Dated: August 22, 1985.

Approved:

James F. Goodrich,

Under Secretary of the Navy.

[FR Doc. 85-21300 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has determined that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are vessels of the Navy which, due to

their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval frigates, and (2) has found that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are members of the FFG 7 class of ships, certain exemptions for which have been previously granted under 72 COLREGS Rule 38. The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: April 20, 1981.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332. Telephone number (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in Executive Order 11964 and 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a) regarding the arcs of visibility of their forward masthead lights; Annex I, section 2(a)(i), regarding the height above the hull of their forward masthead lights; and Annex I, Section 3(b), regarding the horizontal relationship of their sidelights to their forward masthead lights, without interfering with their special function as Navy frigates. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS JOHN A. MOORE (FFG 19) and USS FLATLEY (FFG 21) are members of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to these three ships. Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner different from

that prescribed herein will adversely affect the ships' ability to perform their military function.

List of Subjects in 32 CFR Part 706

Marine Safety Navigation (water).
Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The Authority citation for Part 706 is revised to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessels to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, Section 2(a)(i) annex I
USS CLIFTON SPRAGUE	FFG 16	1.6
USS JOHN A. MOORE	FFG 19	1.6
USS ANTRIM	FFG 20	1.6
USS FLATLEY	FFG 21	1.6

3. Table Four of § 706.2 is amended by revising the existing paragraph 8. to read:

8. On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head.

USS CLIFTON SPRAGUE (FFG 16)
USS JOHN A. MOORE (FFG 19)
USS ANTRIM (FFG 20)
USS FLATLEY (FFG 21)

4. Table Four of § 706.2 is amended by revising the existing paragraph 9. to read:

9. Sidelights on the following ships do not comply with Annex 1, Section 3(b):

Vessel	Number	Distance of sidelights forward of masthead light in meters
USS CLIFTON SPRAGUE	FFG 16	2.75
USS JOHN A. MOORE	FFG 19	2.75
USS ANTRIM	FFG 20	2.75
USS FLATLEY	FFG 21	2.75

Dated: April 20, 1981.

Robert J. Murray,
Acting Secretary of the Navy.

Editor's Note: This docket was received for publication by the OFR on September 3, 1985.

[FR Doc. 85-21301 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 865

Personnel Review Boards; Air Force Board for Correction of Military Records

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has issued a revision to Part 865, Subpart A of Subchapter G, Title 32 of the Code of Federal Regulations, which provides for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records.

EFFECTIVE DATE: May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. D'Orazio, Secretary of the Air Force/MICB(S), Washington, D.C. 20330, telephone (202) 692-4726.

SUPPLEMENTARY INFORMATION: On 4 April 1984, the Department of the Air Force published (at 49 FR 13382) a proposed regulation changing the procedures for making application, and consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records. The following summarizes the major comments received and action taken:

Three commenters objected to the proposed 25-page limit on briefs submitted for consideration by the Air Force Board for Correction of Military Records (§ 865.8). The common objection was that the limit was unnecessary and unjustified. In recognition of the fact that there are occasional cases of unusual complexity, a provision for waiver by the Board, either at the request of an applicant and on showing of good cause, or on the Board's own motion, was included, to ensure adequate briefing of issues the Board considers important. Three commenters related objections to the proposal that the Board's staff review a request for reconsideration of an appeal to determine whether new and/or relevant evidence had been submitted

for review (§ 865.8(c)). The objection to the staff reaching a determination as to the relevance of evidence accompanying such a request is well taken and the rule was changed to clearly state that this determination is the prerogative of the Board. However, the determination of whether or not the evidence is "new", that is, not already of record in the proceeding, is a ministerial one which may properly be delegated to the staff.

One commenter suggested that the provision of the rule which set forth the requirements for a statement of grounds for denial of a case (§ 865.8(d)) be changed to include the requirement that the Board include all other essential facts as well as the facts of record which are used as bases for denial of an appeal. This suggestion was based on the notion that the Board may make a finding of fact which is not a fact "of record". This assertion is without merit. The Board does not make separate findings of fact; its conclusions are based on the evidence of record and the record is open to the applicant. One commenter suggested that the § 865.21 be amended to include provision to allow for a review of the Board's recommendation in the case and the opportunity to submit rebuttal comments, before the Secretary of the Air Force takes action. No such rights exist in non-adversarial proceedings and there is no legal requirement that such a review and comment be permitted.

One commenter suggested that provision be made to include, under special category cases, a rule applicable to those members who received less than fully honorable discharges for civilian misconduct while members of the Reserve component serving in an inactive status. Inasmuch as the Order by the U.S. District Court for the District of Columbia, cited by the commenter, was issued more than four years prior to the publication of the final rule, compliance to the extent required is presumably accomplished.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Note.—This rule is affected by the Privacy Act of 1974. The authorities to collect and maintain the data prescribed in this rule are Title 10, U.S.C. 1552 and E.O. 9397, 22 November 1943. The prescribed form which is used to collect personal information contains a Privacy Act Statement.

Accordingly, 32 CFR Part 865—Subpart A is revised to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

- Sec.
- 865.0 Purpose.
 - 865.1 Legal authority.
 - 865.2 Board establishment and composition.
 - 865.3 Function of the board.
 - 865.4 Board jurisdiction.
 - 865.5 General requirements.
 - 865.6 Time limit for filing application.
 - 865.7 Other proceedings not stayed.
 - 865.8 Withdrawal of application.
 - 865.9 Consideration of application.
 - 865.10 Appearing before the Board.
 - 865.11 Notice of hearing.
 - 865.12 Definition of counsel.
 - 865.13 Witnesses at hearing.
 - 865.14 Access to records.
 - 865.15 Convening the Board.
 - 865.16 Conduct of hearing.
 - 865.17 Continuance of hearing.
 - 865.18 Deliberations, findings, decisions, and recommendations.
 - 865.19 Minority report.
 - 865.20 Record of proceedings.
 - 865.21 Action by the Secretary of the Air Force.
 - 865.22 Action by the Board Secretariat.
 - 865.23 Authority to settle claims.
 - 865.24 Application for settlement.
 - 865.25 Settlement provisions.
 - 865.26 Report of settlement.
 - 865.27 Staff assistance.
 - 865.28 Paying expenses.
 - 865.29 Publication in the Federal Register.
- Authority: Secs. 1552, 8012, 70A Stat. 116, 488; 10 U.S.C. 1552, 8012.

Subpart A—Air Force Board for Correction of Military Records

§ 865.0 Purpose.

This rule establishes procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for Correction of Military Records (hereinafter referred to as the Board). This rule applies to all Air Force activities.

§ 865.1 Legal authority.

Section 131 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, and as reenacted and codified in Title 10, U.S.C. section 1552, provides:

Sec. 1552. Correction of military records: claims incident thereto.
(a) The Secretary of a military department, under procedures established by him and

approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment. A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but not for longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

Correction of Military Records has been established in the Office of the Secretary of the Air Force. The Board consists of civilians of the executive part of the Department of the Air Force in such number, not less than three, as may be appointed by the Secretary of the Air Force. Three members present will constitute a panel and quorum of the Board.

§ 865.3. Function of the board.

The function of the Board is to consider all applications properly before it to determine the existence of an error or an injustice and, when appropriate, to make recommendations to the Secretary of the Air Force.

§ 865.4. Board jurisdiction.

The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 865.5. General requirements.

(a) *Submission.* The application for correction should be submitted on DD Form 149, Application for Correction of Military or Naval Records under the Provisions of Title 10, U.S. Code section 1552, or exact facsimile thereof, and should be addressed to:

AFMPC/MPCDOA1
Randolph AFB, TX 78150

Note.—Forms and explanatory matter may be obtained from the same activity.

(b) *Who Signs Application.* Except as provided in paragraph (c) of this section, the application will be signed by the person requesting corrective action with respect to his or her record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287.1001).

(c) *When Person Is Unable to Submit Application for Self.* When the record in question is that of a person who is incapable of making application for self, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the application before the Board, the application may be made by the spouse, parent, heir, or legal representative. Proof of proper interest will be submitted as may be required by the Board.

§ 865.6. Time limit for filing application.

A claimant, heir, or legal representative, must file the application for correction of a record with the Secretary of the Air Force within 3 years after discovery of the alleged error or injustice. Failure to file within the time

prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, heir, or legal representative files an application more than 3 years after he or she discovers the error or injustice, he or she must include in his or her application his or her reasons why the Board should find it is in the interest of justice to excuse his or her failure to file the application within the time prescribed above.

§ 865.7. Other proceedings not stayed.

The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

§ 865.8. Withdrawal of application.

The Board may permit an applicant to withdraw his or her application without prejudice at any time before its proceedings are sent to the Secretary of the Air Force.

§ 865.9. Consideration of application.

No application will be considered until the applicant has exhausted all effective administrative remedies afforded by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant. A brief furnished in support of an application submitted according to this part will not exceed 25 double-spaced typewritten pages. In addition, rebuttal comments submitted in response to the Air Staff advisory option will not exceed 10 double-spaced typewritten pages. In cases of unusual complexity, the Board may waive these limitations either at the request of the applicant and on showing of good cause, or on the Board's own motion. In cases where the Board approves a waiver of the standard limitation, a new, higher page limit may be imposed.

(a) *Review.* Each application and the available military or naval records pertinent to the corrective action requested will be reviewed by a panel of the Board in Executive Session to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases. If the application has not been filed within 3 years after the applicant discovered the alleged error or injustice and the applicant did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years, the application will

§ 865.2 Board establishment and composition.

Pursuant to the foregoing statutory authority, the Air Force Board for

be returned by the Executive Secretary as incomplete.

(b) *Denial of Application.* The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him or her, that effective relief cannot be granted, or that the applicant did not file his or her application within 3 years after he or she discovered or reasonably could have discovered the alleged error or injustice and insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed 3 years. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate probable material error or injustice is without prejudice to further consideration if newly discovered relevant evidence is submitted. The applicant will be informed of his or her privilege to submit newly discovered relevant evidence for consideration.

(c) *Reconsideration.* Requests for reconsideration shall provide newly discovered relevant evidence not reasonably available to the applicant at the time of a previous application. All requests for further consideration will be initially screened by the staff of the Board to determine whether any factual allegations or any arguments, or any documentary evidence has been submitted by the applicant that was not of record at the time of any prior Board consideration. If no such allegations, arguments or evidence have been submitted, the applicant will be informed that the request was not considered by the Board because it did not contain any newly discovered evidence or other matter that was not of record at the time of any previous Board consideration. If such factual allegations, or documentary evidence have been submitted, the request shall be forwarded to the Board for a determination in accordance with paragraph (a) of this section. The Board will determine the relevance and weight of any evidence submitted; and, whether or not the evidence was reasonably discoverable by the applicant at the time of any previous application.

(d) *Written Proceedings.* When the Board determines that the record should be corrected or that the application be denied, the determination of the Board will be made in writing. The writings (proceedings) will include, but not be limited to, all facts of record, and statement of ground(s) upon which the Board's determination is based. Where the Board concludes complete relief should not be granted, written proceedings will address applicant's claim(s) of constitutional, statutory, and/or regulatory violation rejected by the Board and/or reviewing authority. In those cases involving the characterization of an individual's discharge or dismissal from the military service, the factors required by Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal in question will be included.

§ 865.10. Appearing before the Board.

In each case in which the Board determines that a hearing is warranted the applicant will be entitled to appear before the Board either in person or by counsel of his or her own selection or in person with counsel.

§ 865.11. Notice of hearing.

(a) *To Applicant and Counsel.* In each case in which a hearing is authorized, the Executive Secretary of the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days before the date of hearing, except that an earlier date may be set where the applicant waives his or her right to such notice in writing.

(b) *To the Board.* Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days before the date for hearing as to whether the applicant will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as the applicant may intend to call in his or her behalf. Cases in which the Board is notified that the applicant does not desire to be present at the hearing will be considered according to § 865.16(b) below.

§ 865.12. Definition of counsel.

The term "counsel" will be construed to include members in good standing of the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under Title 38, United States Code, section 3402, or such other persons, who

in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

§ 865.13. Witnesses at hearing.

The applicant will be permitted to present witnesses at hearings before the Board. It will be the responsibility of the applicant to notify the witnesses and to arrange for their appearance at the time and place set for hearing.

§ 865.14. Access to records.

(a) *Official Records.* The applicant will have access to all records considered by the Board with the exception of any classified and privileged matter contained therein.

(b) *Classified or Privileged Matter.* Classified or privileged matter will not be disclosed or made available. When appropriate, the applicant may be supplied only with an unclassified summary or extract of classified matter. The summary or extract will not reveal the nature of the withheld material.

(c) *Copies of Records.* This part does not authorize the Board to furnish copies of official records. Requests for copies of official records should be submitted according to regulations governing release of information (for example, AFRs 12-30 and 12-35).

§ 865.15. Convening the Board.

The Board will be convened at the call of the Panel Chairman and will recess or adjourn at his or her order.

§ 865.16. Conduct of hearing.

(a) *By Panel Chairman.* The hearings will be conducted by the Panel Chairman, and will be subject to his or her rulings that will be designed, insofar as practicable, to accord the applicant an opportunity to make a full and fair presentation of his or her case. The Board will not be limited by legal rules of evidence, but will maintain reasonable bounds of competency, relevancy, and materiality. Hearings are normally limited to 2 hours. However, additional time may be granted at the discretion of the Panel Chairman. AFR 11-31 is not applicable to hearings conducted by the Board.

(b) *When Applicant is not Present or Represented at Hearing.* If the applicant, after being duly notified, has decided not to appear in person or be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any

Air Staff advisories, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(c) *When Applicant Fails To Appear at Time and Place Set for Hearing.* If the applicant, after being duly notified, has indicated to the Board a desire to be present or to be represented by counsel at the hearing, and without good cause and timely notice to the Board, the applicant or a representative fails to appear at the time and place set for the hearing, the Board may consider the case as explained in paragraph (b) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(d) *Testimony.* All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

§ 865.17. Continuance of hearing.

The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to ensure a full and fair hearing.

§ 865.18. Deliberations, findings, decisions, and recommendations.

(a) *Deliberations.* Only members of the Board and its staff will be present during the deliberations of the Board.

(b) *Further Information.* During the course of review of the case when it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues. The applicant will have access to evidence developed by the Board on its own motion in accordance with § 865.14 and may submit additional comment with regard to the evidence.

(c) *Findings, Decisions, and Recommendations.* Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(d) *Separate Communication.* Where the Board considers it necessary to submit comments or recommendations to the Secretary of the Air Force as to matters arising from, but not directly related to the issues of any case, such comments and recommendations will be the subject of separate communication.

(e) Delegation of Authority To Correct Certain Military Records:

(1) The Air Force Board for Correction of Military Records is authorized to take final action on behalf of the Secretary of the Air Force in approving the correction of military records, provided such action:

- (i) Has been recommended by the Air Staff;
- (ii) Is unanimously agreed to by the Board; and
- (iii) Falls into one of the following categories:

(A) Restoration of leave unduly charged to applicants.

(B) Promotion of applicants retroactively, who would have been promoted during regular enlisted promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(C) Promotion of applicants to grades held immediately before reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(D) Award of basic allowance for subsistence, basic allowance for quarters, family separation allowance, civilian clothing allowance, housing allowance and cost of living allowance to applicants entitled thereto.

(E) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan, the Survivor Benefit Plan and/or the Reserve Components-Survivor Benefit Plan where failure to elect to participate, decline to participate, or to make an appropriate election was through no fault of the service member.

(F) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(G) Award of Selective Reenlistment Bonuses, Proficiency Pay, Enlistment and/or Reenlistment Bonuses.

(H) Change of home of record where upon entry on duty applicants erroneously reported an address other than actual home.

(I) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(J) Award variable incentive pay (VIP).

(K) Award allowance for command sponsorship of dependents.

(L) Authorize reimbursement for shipment of excess baggage, movement of a house trailer, mobile home, and/or storage and shipment of household

goods incident to permanent change of station assignment (PCS).

(M) Award of allowance for dependent(s) travel.

(N) Authorize the award of citations and/or decorations.

(O) Award of date of rank (DOR) (commissioned and enlisted).

(P) Change of Active Duty Service Commitment (ADSC).

(Q) Award of flying pay (incentive pay).

(R) Change in overseas tours (accompanied and/or all others).

(S) Authorize permissive temporary duty (TDY).

(T) Award of Air Force specialty code (AFSC).

(U) Change of effective date of retirement.

(V) Change reenlistment eligibility code (RE-Code).

(W) Reinstatement to active reserve status in the Reserve of the Air Force (AFRes and ANGUS), of applicants who were inadvertently or improperly assigned to an inactive reserve status and/or to the retired reserve.

(X) Change grade of enlistment in United States Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(Y) Set aside disciplinary punishment imposed pursuant to Article 15, UCMJ.

(Z) Authorize the recharacterization of less than honorable discharges to an honorable discharge or general under honorable conditions.

(AA) Corrections, deletions, and/or additions to evaluation reports (Officer and Airman) which are excluded under the provisions of AFR 31-11.

(BB) Change date of enlistment in US Air Force and/or Reserve of the Air Force (AFRes and ANGUS).

(CC) Delete time lost and all references thereto from the record.

(DD) Award of constructive service credit.

(EE) Change date of separation (DOS).

(FF) Change entries on DD Form 214, Certificate of Release or Discharge from Active Duty.

(GG) Change reason and/or authority for discharge.

(HH) Award of operational flying duty credit.

(II) Deletion of correspondence and/or documents from the records which are derogatory and/or unfavorable to applicants.

(2) The Executive Secretary of the Board or designee, after assuring compliance with the above stated conditions, will announce the final action on applications processed under this subparagraph.

§ 865.19 Minority report.

In the case of a disagreement between members of the Board, a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor. The report will become a part of the proceedings and used in making the final decision.

§ 865.20 Record of proceedings.

When the Board has completed its deliberations, a record of proceedings will be prepared. Such record will indicate whether or not a quorum was present, and the name and vote of each member present. The record of proceedings will include the application for relief; briefs and written arguments; advisory opinions; the findings, conclusions, and recommendations of the Board; and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record will also include a transcript of testimony and any minority reports. The record so prepared will be certified as true and complete by the signature of the panel chairman or designee.

§ 865.21 Action by the Secretary of the Air Force.

All Board recommendations for correction or records, except those finalized by the Board under the authority contained in § 865.18(e) will be forwarded to the Secretary of the Air Force or his designee who will direct such action in each case as he or she determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration will be accompanied by a brief statement setting out the reasons for such action and any specific instructions. If the Secretary's decision is to deny relief, notwithstanding the Board's recommendation, such decision will be in writing and will include a brief statement of the ground(s) for denial. All Secretarial decision documents will be furnished to the applicant and counsel.

§ 865.22 Action by the Board Secretariat.

(a) *Returning Case to the Board.* On final action by the Secretary of the Air Force or his designee, the complete record in each case is returned to the Board Secretariat. The Board Secretariat will transmit the Secretary's decision to the Chief of Staff, US Air Force, for appropriate action.

(b) *Communicating Decision to Applicant and Counsel.* On receipt of proceedings after final action, the Board Secretariat will communicate the

decision to the applicant or counsel, by furnishing applicant or counsel a copy of the record of proceedings.

(c) *Informing Applicant when Corrective Action has been Completed.* When all necessary corrective action has been completed by HQ, USAF, the applicant will be informed of such action by the HQ USAF office designated by the Chief of Staff, US Air Force.

(d) *Written Notice to Chairman of Board.* Written notice specifying the action taken and the date thereof will be transmitted to the chairman of the Board.

(e) *Filing Records of Decision of the Secretary of the Air Force.* The record of the decision of the Secretary of the Air Force will not be filed in the military records of the applicant where the effect of such action would be to nullify the relief granted, or in those cases in which the application is denied.

(f) *Release of Record of Proceedings to the Public.* After action on the record by the Secretary of the Air Force, his designee, by the Executive Secretary of the Board acting under the authority contained in § 865.18(e), or when the Board denies an application without a hearing, the Board Secretariat will release for public inspection and copying, at a designated reading room within the Washington, DC metropolitan area, a sanitized and indexed copy of the record of proceedings and all decisional documents. To the extent required and to prevent a clearly unwarranted invasion of personal privacy, identifying details concerning the applicant and other persons will be deleted from all documents. An index of record of proceedings, formulated so as to enable those who represent applicants to isolate from all those decisions that are indexed those cases that may be similar to an applicant's case and which indicates that grounds for which the Board and/or the Secretary granted or denied relief, will be published quarterly and will be made available for public inspection and sale at the reading room.

§ 865.23 Authority to settle claims.

(a) *Claims Authorized to be Settled and Paid.* The Department of the Air Force is authorized to pay claims according to 10 U.S.C. 1552, which is quoted in § 865.1.

(b) *Claims Not Authorized to be Paid.* The Department of the Air Force is not authorized to pay any claim heretofore compensated by the Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the

laws and regulations administered by the Administrator of Veterans' Affairs.

§ 865.24 Application for settlement.

(a) *Filing Claims.* Settlement and payment of claims, will be made only upon a claim of the person whose record has been corrected; or his or her legal representative, heirs at law, or beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(b) *To Whom Payments will be Made if Person is Deceased.* In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due will be made to the decedent's spouse, heir, or beneficiaries, in order of precedence as prescribed in Title 10, United States Code, section 1552.

(c) *Determining Status as Proper Parties to Claim.* Upon request, the applicant or applicants will be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

§ 865.25 Settlement provisions.

(a) *Basis for Settlement.* Settlement of claims will be based on the decision of the Secretary of the Air Force. Computations of amounts due will be made by the Comptroller of the Air Force, HQ USAF, or his or her representative, according to applicable law and regulations. In no case will the amount found due exceed the amount which would otherwise have been paid or become due had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government, in compliance with the Debt Collection Act of 1982 or successor statutes.

(b) *Nature and Amount of Various Benefits.* Before or at the time of payment, the person to whom payments are to be made will be advised by the Comptroller of the Air Force, HQ USAF, or representative, as to the nature and amount of the various benefits represented by the total settlement, and will be advised further that acceptance of such settlement will constitute a complete release by the claimants involved of any claim against the United States on account of the correction of records.

§ 865.26. Report of settlement.

In every case where payment is made, the amount of such payment and the name of the payee or payees will be reported to the chairman of the Board.

§ 865.27. Staff assistance.

(a) *Assembling and Transmitting Available Military Records.* At the request of the Board, the appropriate staff office will assemble the original or copies of all available military records pertinent to the corrective action requested. Such records, together with the application and all supporting papers, will be transmitted to the Board with a certification from the staff office designated by the Chief of Staff, US Air Force, that the corrective action requested cannot be granted through administrative action by any staff office.

(b) *Facilities of Staff Offices.* The facilities of all staff offices will be made available as required to assist the Board in accomplishing its function. Upon request of the Board, personnel of the Department of the Air Force will be made available for presentation before the Board of matters within their functional areas and which relate to the issues under consideration. The appropriate Department of the Air Force office of primary responsibility (OPR) will also provide the Board with an official evaluation of each application, stating, among other things, its interpretation of the request, its opinion of the applicant's contention(s) and supporting evidence (if any) and a recommendation (to include appropriate rationale) as to whether or not the Board should render a favorable recommendation.

§ 865.28. Paying expenses.

No expense of any nature whatsoever voluntarily incurred by the applicant, his or her counsel, his or her witnesses, or by any other person in his or her behalf, will be paid by the government.

§ 865.29. Publication in the Federal Register.

This part and any amendments will be published in the Federal Register.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-21322 Filed 9-5-85; 8:45 am]

BILLING CODE 3910-01-M

POSTAL SERVICE**39 CFR Part 10**

Express Mail International Service to the Bahamas and Greece

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to the Bahamas and Greece.

SUMMARY: Pursuant to agreements with the postal administrations of the Bahamas and Greece, the Postal Service intends to begin Express Mail International Service with those countries at postage rates indicated in the tables below. Service is scheduled to begin on October 6, 1985.

EFFECTIVE DATE: October 6, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlman, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the Federal Register on August 1, 1985 (50 FR 31199), the Postal Service announced that it was proposing to begin Express Mail International Service to the Bahamas and Greece. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with the Bahamas and Greece on October 6, 1985 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

BAHAMAS—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service ^{1,2}		On demand service ³	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	\$31.00	1	\$23.00
2	34.80	2	27.90
3	38.60	3	32.80
4	42.40	4	37.70
5	46.20	5	42.60
6	50.00	6	47.50
7	53.80	7	52.40
8	57.60	8	57.30
9	61.40	9	62.20
10	65.20	10	67.10
11	69.00	11	72.00
12	72.80	12	76.90
13	76.60	13	81.80
14	80.40	14	86.70
15	84.20	15	91.60
16	88.00	16	96.50
17	91.80	17	101.40
18	95.60	18	106.30
19	99.40	19	111.20
20	103.20	20	116.10
21	107.00	21	121.00
22	110.80	22	125.90
23	114.60	23	130.80
		24	135.70
		25	140.60
		26	145.50
		27	150.40
		28	155.30
		29	160.20
		30	165.10
		31	170.00
		32	174.90
		33	179.80
		34	184.70
		35	189.60
		36	194.50
		37	199.40
		38	204.30
		39	209.20
		40	214.10
		41	219.00
		42	223.90
		43	228.80
		44	233.70

BAHAMAS—EXPRESS MAIL INTERNATIONAL SERVICE—Continued

Custom designed service ^{1,2}		On demand service ³	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
24	118.40	24	110.40
25	122.20	25	114.29
26	126.00	26	118.00
27	129.80	27	121.80
28	133.60	28	125.60
29	137.40	29	129.40
30	141.20	30	133.20
31	145.00	31	137.00
32	148.80	32	140.80
33	152.60	33	144.60
34	156.40	34	148.40
35	160.20	35	152.20
36	164.00	36	156.00
37	167.80	37	159.80
38	171.60	38	163.60
39	175.40	39	167.40
40	179.20	40	171.20
41	183.00	41	175.00
42	186.80	42	178.80
43	190.60	43	182.60
44	194.40	44	186.40

¹ Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

² Pickup is available under a Service Agreement for an added charge of \$5.00 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

GREECE—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service ^{1,2}		On Demand service ³	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	\$31.00	1	\$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

¹ Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

² Pickup is available under a Service Agreement for an added charge of \$5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-21302 Filed 9-5-85; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704; FCC 84-487]

Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions

Correction

In FR Doc. 85-1336 beginning on page 2671 in the issue of Friday, January 18, 1985, make the following correction:

On page 2675, third column, in the first line below the "PART" heading "25.209" should read "25.509".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment of Railroad Lines and Discontinuance of Service; Offers of Financial Assistance; Technical Amendment

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment to final rules.

SUMMARY: At 48 FR 55129, December 9, 1983, the Commission modified regulations at 49 CFR 1152.27 which govern offers of financial assistance under 49 U.S.C. 10905 to reduce the amount of information required to be submitted with the offer of financial assistance. That notice contained an error in paragraph (h)(6), which this technical amendment corrects.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1152

Railroads.

Title 49 of the CFR is amended as follows:

PART 1152—[AMENDED]

1. The individual authority citations following §§ 1152.1, 1152.2, 1152.10, 1152.12, 1152.13, 1152.20, 1152.21, 1152.22, 1152.23, 1152.24, 1152.25, 1152.26, 1152.27, 1152.28, 1152.30, 1152.32, 1152.33, 1152.34, 1152.35, 1152.36, and 1152.50 and following the Appendix to Part 1152 are removed and the authority for Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

§ 1152.27 [Amended]

2. Section 1152.27 is amended by revising the words "of this section" in the second sentence of paragraph (h)(6) to read "below."

James H. Bayne,

Secretary.

[FR Doc. 85-21291 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Removal of Waterfowl Hunting Closure

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of removal of hunting closure.

SUMMARY: This notice announces that the closure on waterfowl hunting in the disputed areas of Illinois, Missouri, and Oklahoma as announced in the September 5, 1985, Federal Register has been removed with the exception that in Illinois the closure is only removed on their 9-day September teal season (September 7-15, 1985). This action is necessary to comply with an August 26, 1985, Federal District Court Order (later modified on August 29, 1985).

EFFECTIVE DATE: This notice takes effect on September 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Matomic Building, Room 536, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Service published proposed rules in the Federal Register (50 FR 6017-6022) describing zones

where nontoxic shot should be used during the 1985-86 waterfowl hunting season in order to offset a threat of lead poisoning to bald eagles that might otherwise ingest lead pellets lodged in or ingested by waterfowl. All or portions of 30 counties in 8 States were proposed as nontoxic shot zones.

Appropriated funds for the Department of the Interior for fiscal year 1985 were restricted in their use by the following provision contained in the Department's Appropriation Act:

No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

In response to the above law, each of the 8 States involved in the proposal of February 13, 1985, received a telegram from the Service requesting State approval to implement and enforce the proposed rule.

The States of Iowa, Kansas and South Dakota agreed to the designation of nontoxic shot zones that were published in the Federal Register on May 7, 1985 (50 FR 19178-19182). On the same day, the Service published a Notice of Intent (50 FR 19248-19249) not to open the waterfowl season during the 1986-87 hunting season in the proposed zones in the remaining States of California, Illinois, Missouri, Oklahoma and Oregon, unless those States agreed to such nontoxic shot zones for that season.

On June 14, 1985, the National Wildlife Federation sued the Department of the Interior to block use of lead shot for waterfowl hunting during the 1985-86 season in the 22 counties of the 5 States that had not agreed to nontoxic shot zones for this year. On August 26, 1985, the Federal District Court for the Eastern District of California ordered that lead shot may not be allowed for the hunting of migratory birds in the disputed areas of California, Illinois, Missouri, Oklahoma and Oregon, and that this hunting may not be authorized for the 1985-86 season unless and until the affected States authorize, agree to and aid the imposition of nontoxic shot requirements by the Service.

That order was modified on August 29, 1985, to clarify and limit its application only to the hunting of waterfowl as opposed to other species of game birds such as doves.

Pursuant to that order, the Service, on September 5, 1985, published final frameworks for the 1985-86 waterfowl hunting season that did not authorize migratory bird hunting in the disputed areas. In response to these closures, Illinois, Missouri and Oklahoma have now agreed to the imposition of steel shot regulations with the exception that in Illinois it is for the early hunting season only. With these States having agreed to allow the Service to implement and enforce nontoxic shot zones in the disputed areas, the Service has amended 50 CFR 20.108 in the final rules section of this issue of the Federal Register. Establishment of the disputed areas as nontoxic shot zones satisfies the modified court order of August 29, 1985, and notice therefore is hereby given that the closure on waterfowl hunting in the areas of Illinois, Missouri and Oklahoma described in the September 5, 1985, Federal Register has been removed with the exception that in Illinois the closure is only removed for their 9-day September teal season (September 7-15, 1985), and that waterfowl hunting with firearms is permitted only if nontoxic shot is used.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports,
Transportation, Wildlife.

This notice is issued under the authority of the Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755; 16 U.S.C. 703-711), as amended.

Dated: September 4, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-21390 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting: Zones in Which Nontoxic Shot Will Be Required for Waterfowl Hunting in the 1985-86 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document amends and corrects the final regulations describing zones in which nontoxic shot will be required for waterfowl hunting in the 1985-86 hunting season published on May 7, 1985 (50 FR 19178). The circumstances creating the need for these corrections were: (1) South Dakota used its authority under the Department of the Interior's Appropriations Act to determine the scope and extent of a nontoxic shot program within the State and to change its previously announced

nontoxic shot requirements; (2) the August 26, 1985, judgment of the United States District Court for the Eastern District of California in the suit the National Wildlife Federation brought against the Secretary of the Interior for allowing lead shot to be used by waterfowl hunters in certain areas; (3) the need to correct a numbering error in the May 7, 1985, publication. Specifically, this document will: (1) exclude the implementation and enforcement of nontoxic shot requirements in nontoxic shot zones in the State of South Dakota for persons under 16 years of age using 16 gauge, 28 gauge, or .410 gauge shotguns, and persons using muzzle-loading shotguns; (2) require the use of steel shot for migratory waterfowl hunting in 15 counties and portions of seven other counties in five States described in the body of this document that were not originally described in the May 7, 1985, document; (3) correct the numbering of a paragraph contained in the May 7, 1985, Federal Register publication for the State of Iowa.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT:

James F. Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th & C Streets NW., Room 2343, Washington, DC 20240 (202-343-4311).

SUPPLEMENTARY INFORMATION: Since 1978, no nontoxic shot zone could be implemented or enforced by the Fish and Wildlife Service (FWS) in a State without approval of the appropriate State authorities. This restriction on the use of funds by FWS has been contained in the Department of the Interior's Appropriations Act (most recently Pub. L. 98-473, Sec. 305) each year since 1978. South Dakota, in a letter dated August 23, 1985, formally withdrew its prior authorization for the FWS to implement and enforce the nontoxic shot requirement in South Dakota nontoxic shot zones for persons under 16 years of age using 16 gauge, 28 gauge, or .410 gauge shotguns, and persons using muzzle-loading shotguns. As the Appropriation Act's limitation is absolute in its terms and mandatory in its effect, the FWS is obligated to promptly give it effect and has no administrative discretion that might be influenced or facilitated by notice and comment procedures. Moreover, the start of the 1985-86 hunting season in South Dakota is rapidly approaching, thereby further necessitating immediate regulatory action on the part of the FWS in order to implement the August 23rd request of that State.

Regarding an additional nontoxic shot issue on February 13, 1985, the FWS published proposed rules in the Federal Register (50 FR 6017-6022) describing zones where nontoxic shot should be used during the 1985-86 waterfowl hunting season in order to offset a threat of lead poisoning to bald eagles that feed on waterfowl and in doing so might otherwise ingest lead pellets lodged in or ingested by waterfowl. All or portions of 30 counties in 8 States were proposed as nontoxic shot zones.

The States of Iowa, Kansas and South Dakota agreed to the designation of nontoxic shot zones that were published in the Federal Register on May 7, 1985 (50 FR 19178-19182). On the same day, the FWS published a Notice of Intent (50 FR 19248-19249) not to open the waterfowl season during the 1986-87 hunting season in the proposed zones in the remaining States of California, Illinois, Missouri, Oklahoma and Oregon, unless those States agreed to such nontoxic shot zones for that season.

On June 14, 1985, the National Wildlife Federation (NWF) sued the Department of the Interior to block use of lead shot for waterfowl hunting during the 1985-86 season in the 22 counties of the 5 States that had not agreed to nontoxic shot zones for this year. On August 28, 1985, the Federal District Court for the Eastern District of California ruled in favor of NWF and ordered that lead shot may not be allowed for the hunting of migratory birds in the disputed areas of California, Illinois, Missouri, Oklahoma and Oregon, and that this hunting may not be authorized for the 1985-86 season unless and until the affected States authorized, agreed to and aided in the imposition of nontoxic shot requirements by the FWS. That order was modified on August 29, 1985, to apply only to the hunting of waterfowl as opposed to other species of game birds such as doves.

Pursuant to that order, the FWS, on September 5, 1985, published, in the Federal Register final frameworks for the 1985-86 waterfowl hunting season that did not authorize waterfowl hunting in the disputed areas. In response to the court's order the affected States have now agreed to the imposition and enforcement of steel shot regulations in the disputed areas.

With these States having agreed to allow the FWS to implement and enforce nontoxic shot zones in the disputed areas, the FWS now formally amends 50 CFR § 20.108 to add these areas to the list of nontoxic shot zones. Therefore, the closure on waterfowl

hunting in the areas described in the September 5, 1985, Federal Register is now being lifted with the exception that in Illinois the closure has only been removed for their 9-day September teal season (September 7-15, 1985) since Illinois approval for nontoxic shot was limited to that season.

Given the imminence of the migratory bird hunting season and in light of the other factors outlined above, the FWS has determined that notice and comment on these regulatory changes are impracticable, unnecessary, and contrary to the public interest within the meaning of 5 U.S.C. 553(B). For the same reasons, the FWS has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) to give immediate effect to this rulemaking upon publication.

As a notice of proposed rulemaking has not been issued for these amendments, it is not a "Rule" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2). These amendments come within the exemptions of Executive Order (E.O.) 12291 for rules issued in response to emergency situations and for rules the consideration of which would conflict with deadlines imposed by statute or judicial order. South Dakota's invocation of the authority given to it by Congress in Interior's Appropriations Act has been granted immediate effect. Likewise, the ruling of the United States District Court for the Eastern District of California in favor of the plaintiff has been granted immediate effect. The ruling (Civil Action No. S-85-0837 EJC), has created an emergency situation conflicting with the normal rulemaking process.

Accordingly, the FWS, in complying with the above changes in its steel shot zone requirements, certifies that this rulemaking is a response to an emergency situation and that consideration of this rulemaking under E.O. 12291 would result in conflicts with deadlines imposed by the above-mentioned amendment and judicial order, rendering it impractical to comply with that amendment and order. This rule contains no new information-gathering requirement subject to review under the Paperwork Reduction Act, 44 U.S.C. 3501.

This rule also makes a technical correction to certain regulations for 50 CFR Part 20 which were published in the Federal Register on May 7, 1985, at 50 FR 19181.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95-616, 92 Stat. 3112, (16 U.S.C. 712).

§ 20.108 [Amended]

2. Section 20.108 is amended by revising the following zone description for the State of South Dakota in its entirety as follows:

South Dakota

Those portions of Potter and Sully Counties lying west of U.S. 83; that portion of Hughes County lying west of U.S. 83 and that portion of Hughes County lying south of U.S. 14; that portion of Hyde County lying south of U.S. 14; and west of Hyde County F.A.S. 6547 (commonly called the Holabird Grade) and that portion of Hyde County lying south of U.S. 34 and west of S.D. 47; and that portion of Buffalo County lying west of S.D. 47. That portion of Lyman and Stanley Counties lying east and north of the Lower Brule-Antelope Creek Road from S.D. 47 to Fort Pierre. That portion of Stanley County lying north of S.D. 34 for approximately 5 miles west of Fort Pierre and east of Stanley County F.A.S. 6193 and S.D. 1806 to Minneconjou Bay. All waters, islands and bars of the Missouri River and its embayments from the north Potter County line downstream to Big Bend Dam, including the Cheyenne River embayment downstream from Minneconjou Bay. On, or within 100 yards of the Grube Slough State Refuge in Marshall County. On Lake Andes or within 100 yards of the water's edge in Charles Mix County. On the Missouri River or within the water's edge from Fort Randall Dam to Choteau Creek, including all islands and bars.

In the above described zones, persons under 16 years of age using 16 gauge, 28 gauge or .410 gauge shotguns, and persons using muzzle-loading shotguns are exempted from the nontoxic shot requirements.

3. By adding to § 20.108, alphabetically by State under the Pacific Flyway, the following nontoxic shot zones for the State of California:

California

That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the northwest corner of Indian Tom Lake; thence south and east of the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the northwest side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding refuge lands on Sheepy Ridge) in the Tule Lake portion of the Klamath Basin.

4. Section 20.108 is further amended by adding the following zone descriptions for the State of Illinois:

Illinois

Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union, and Williamson Counties.

5. Section 20.108 is further amended by adding the following zone descriptions for the State of Missouri:

Missouri

Holt, St. Charles, Pike, and Lincoln Counties, and those portions of Chariton, Livingston, Carroll, Lafayette, Saline, and Linn Counties contained within the Swan Lake Goose Management Area.

6. Section 20.108 is further amended by adding the following zone description for the State of Oklahoma:

Oklahoma

Sequoyah County.

7. Section 20.108 is further amended by adding the following zone descriptions for the State of Oregon:

Oregon

That portion of Klamath County lying west and south of a line commencing at the Oregon-California State line and proceeding along State Highways 39 and 39-140, U.S. Highway 97, and State Highway 62 to the Klamath County-Jackson County line.

8. By correcting the entry for Iowa in FR Doc. 85-10622 appearing on page 19178 in the May 7, 1985, issue of the Federal Register:

On page 19182 at the top of column three, in § 20.108 under the entry for Iowa, the paragraph numbered 3 is corrected to be paragraph number 4.

Dated: September 4, 1985.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21393 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 621

[Docket No. 31031-214]

Fishery Conservation and Management Act of 1976; Civil Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document amends § 621.2—Enforcement policy by replacing a reference in paragraph (a)(1) pertaining to the issuance of warnings, which no longer exist. NOAA and the Coast Guard established a standard policy and procedure for issuing a warning to any person who commits a technical or minor violation of one of the laws that NOAA and the Coast Guard enforce. The reference now is to the governing regulations administered by NOAA and the Coast Guard.

EFFECTIVE DATE: February 6, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haynes (Fishery Management Specialist), 202-634-7432.

List of Subjects in 50 CFR Part 621

Fisheries, Fishing, Fishing vessels, Penalties.

SUPPLEMENTARY INFORMATION:

Dated: September 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 621—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 621 is amended as follows:

1. The authority for Part 621 continues to read as follows:

Authority: 16 U.S.C. 1801-1822.

2. Section 621.2 is amended by revising paragraph (a)(1) to read as follows:

§ 621.2 Enforcement policy.

(a) * * *

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR Part 904 Subpart E);

[FR Doc. 85-21255 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 50, No. 173

Friday, September 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. F&V AO-198 A-13]

Raisins Produced From Grapes Grown in California; Hearing on Proposed Amendment of the Marketing Agreement and Order, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment and text of proposal.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed emergency amendment of the marketing agreement and Order No. 989 (7 CFR Part 989) covering raisins produced from grapes grown in California. The principle issues to be considered would: (1) Require handlers to pay receiving, storing, fumigating, handling, and inspection costs, in addition to harvest costs, when redeeming diversion certificates under the raisin diversion program (RDP); and (2) add authority which would allow the Committee to offer diversion program participants, agreeing to remove raisin grape vines, tonnage in addition to that diverted. The first proposal would bring handlers' costs for acquisition of reserve tonnage raisins purchased under the RDP in line with similar costs handlers pay for reserve raisins purchased for free and export use. The proposal is necessary to maintain consistency in reserve tonnage sales under the marketing order. The second proposal would provide an incentive for more producers to use vine removal which is the most direct and most effective way of accomplishing the diversion program objectives.

DATE: The hearing is scheduled for Tuesday, September 10, 1985, 9:30 a.m.

ADDRESS: The hearing will be held in the Forum Room, Hacienda Resort, 2550 West Clinton, Fresno, California 93705.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief,

Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Telephone: (202) 447-5053.

SUPPLEMENTARY INFORMATION: The amendment was proposed by the Raisin Administrative Committee established under the marketing agreement and order program which covers raisins produced from grapes grown in California. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this proceeding.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment of the marketing agreement and order; (2) determining whether there is a need for amendment to the marketing agreement and order; and (3) determining whether the proposed amendment or an appropriate modification of it will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Marketing Agreement and Order, Grapes, Raisins, and California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Proposed by the Raisin Administrative Committee

Proposal No. 1

Section 989.56(c) is revised to read as follows:

§ 989.56 Raisin diversion program.

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, any producer may divert grapes of his/her own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last crop year eligible for such diversion, or such other weight as determined by the Committee.

Proposal No. 2

Section 989.56(d) is revised to read as follows:

(d) *Redemption of diversion certificates.* Handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established, plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the diversion certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled.

Proposed by the Department of Agriculture

Proposal No. 3

The Secretary of Agriculture shall be authorized to make such changes as may be necessary to make the entire marketing agreement and order conform with any amendment thereto that may result from this hearing.

Dated: September 4, 1985.

James C. Handley,

Administrator.

[FR Doc. 85-21412 Filed 9-5-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-17; Notice No. SC-85-2-NM]

Special Conditions; Avions Marcel Dassault-Breguet Aviation Model Mystere-Falcon 900 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Avions Marcel Dassault-Breguet Aviation Model 1125 Mystere-Falcon 900 series airplane. The airplane will have novel or unusual design features associated with an unusually high operating altitude (51,000 feet) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before October 21, 1985.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-17, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-17. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Transport Standards Staff, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2134.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-17." The postcard will be date/time stamped and returned to the commenter.

Background

On January 12, 1982, Avions Marcel Dassault-Breguet Aviation (AMD-BA), 33 rue du Professeur Victor Pauchet, 92420 Vaucresson, France, filed for an amended type certificate in the transport category for the airplane designated as the Avions Marcel Dassault-Breguet Aviation Mystere-Falcon 900. The Mystere-Falcon 900 is a derivative version of the AMD-BA Mystere-Falcon 50 for which FAA Type Certificate No. A46EU was issued. Compared to the Mystere-Falcon 50, the Mystere-Falcon 900 has an increased length and diameter, three Garrett model TFE 731-5 engines, increased fuel capacity, increased weight, systems changes, and an increase in operating altitude from 45,000 to 51,000 feet.

The oxygen equipment protective capability is limited to 40,000 feet (in this case the passenger equipment). If failure occurs leading to cabin altitudes in excess of 40,000 feet, the event can be catastrophic. To reduce the probability of this event, special conditions are required in addition to the existing regulations.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system). This has been the case for the early Learjet, Lockheed Jetstar, Aero Commander, Cessna 650 (46 FR 35929; July 13, 1981); Mystere-Falcon 200 (49 FR 7219; February 28, 1984); and the Israel

Aircraft Industries Model 1125 Astra (49 FR 9906; March 16, 1984). These same special conditions are proposed herein except as follows:

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitude in lieu of the 1/4-bay crack requirement used in previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25-54.

The cabin altitude after failure may not exceed the cabin altitude/time curve limits in Figure 3 and 4. Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet. However, for rapid decompression above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude is not to exceed 25,000 feet for more than 2 minutes. The maximum cabin altitude has been set at 40,000 feet to agree with past FAA certification. In addition, at these altitudes the other aspect of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases). The limitation proposed herein differ from earlier special conditions and are reflected in the notes proposed on Figures 3 and 4.

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. Proposed Special Condition E.2., therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

The type certification basis for the Mystere-Falcon 900 airplane is as follows: Section 21.29 of Part 21 of the FAR; Part 25 of the FAR effective February 1, 1965, including Amendments 25-1 through 25-34, and certain portions of Amendments 25-35 through 25-56 with which AMD-BA has elected to show compliance; Part 36 of the FAR, including Amendments 36-1 through current amendment; and Special Federal Aviation Regulation 27, dated February 1, 1974, including Amendments 27-1 through 27-5. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are currently issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for the Mystere-Falcon 900 series airplane:

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended, (49

U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

A. Pressure Vessel Integrity

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph D of this Special Condition (Pressurization) must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the following apply:

a. The pressure vessel structure, including doors and windows, must comply with § 25.365(d) of the FAR using a factor of 1.67 in lieu of the 1.33 factor prescribed therein.

b. In addition to the requirements of § 25.365, the fuselage pressure vessel should be capable of withstanding maximum regulated pressure combined with 1 g flight loads with a frame or stringer failed and two

adjacent panels cracked, without total failure of the fuselage or floor collapse.

B. Ventilation

In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilation air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

C. Air Conditioning

In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After improbable failure, the cabin temperature-time history may not exceed the values shown in figure 2.

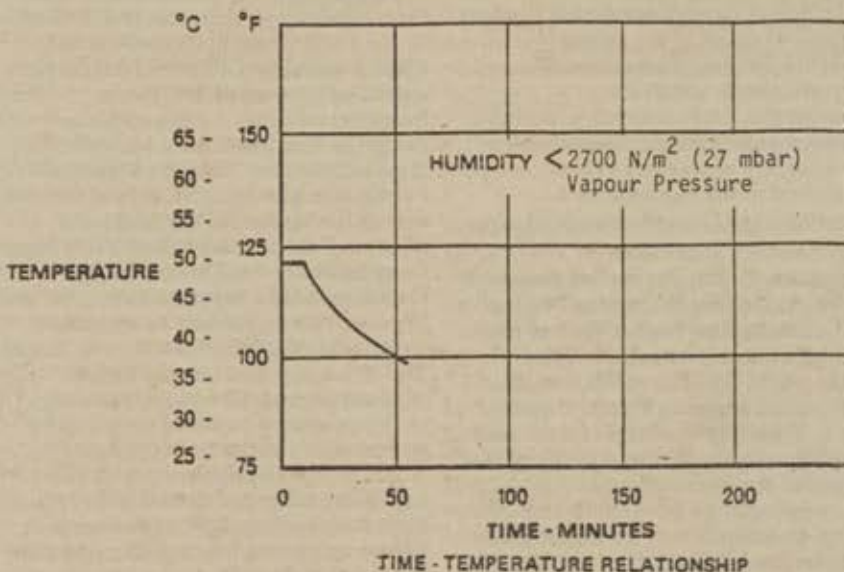


FIGURE 1

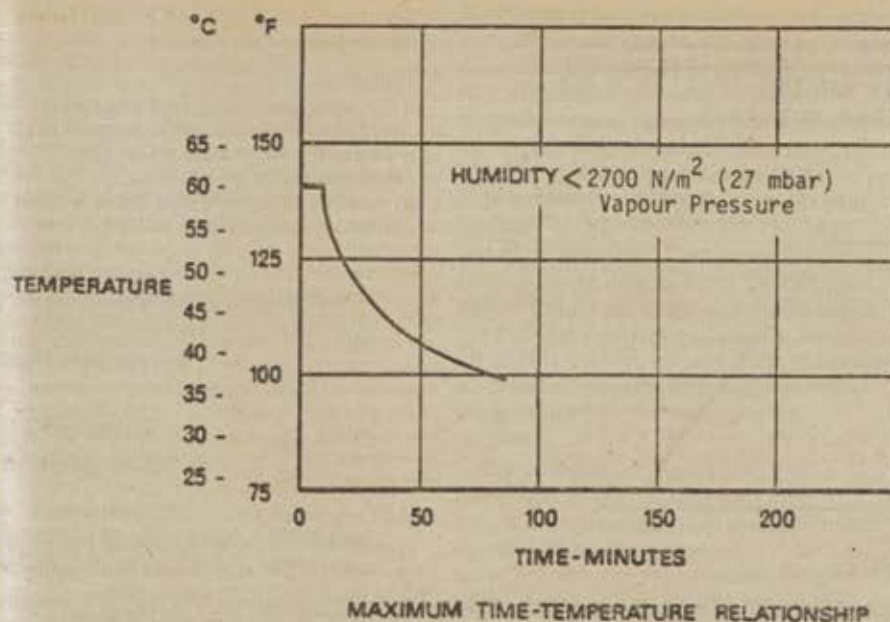


FIGURE 2

D. Pressurization

In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning and pressure control systems, must prevent the cabin altitude from

exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

- a. Any probable double failure in the pressurization system (§ 25.1309, Amendment 41, may be applied).
- b. Any single failure in the pressurization system combined with the occurrence of a

leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

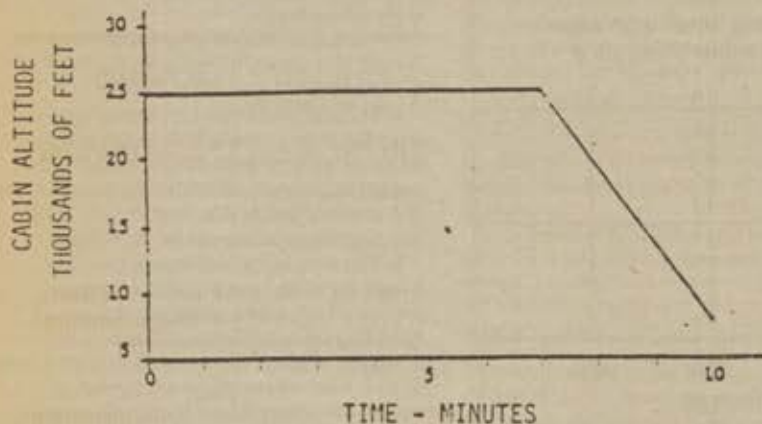
2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

- a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin stringer and skin-frame combinations must be considered.
- b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.
- c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs D1 and D2 of this pressurization special condition, it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

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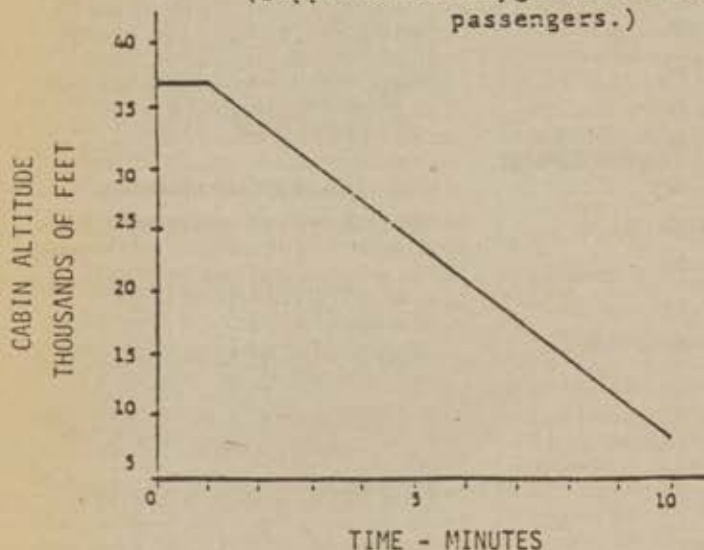
FIGURE 3
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to
all passengers.)



For Figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

FIGURE 4
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all
passengers.)



For Figure 4, time starts at the moment cabin pressure exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

E. Oxygen Equipment and Supply

1. A continuous flow oxygen system must be provided for the passengers.
2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for the pilots. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

Issued in Seattle, Washington, on August 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-21249 Filed 9-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-12-AD]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B and F260C (Including SF260) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws NPRM, Docket No. 85-CE-12-AD, published in the *Federal Register* on April 8, 1985 (50 FR 13815) which proposed inspection and modification of the tip tank fuel tubes on certain models of SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes. The NPRM was prompted by a report from the manufacturer indicating movement of unwelded tip tank fuel tubes due to vibration which could result in obstruction of fuel from the tip tanks, engine fuel starvation and engine stoppage. The NPRM is being withdrawn because subsequent to its issuance the FAA has reevaluated the matter and determined that the situation described herein does not result in an unsafe condition.

ADDRESSES: SIAI-Marchetti Mandatory Service Bulletin (S/B) Number 206B39, dated June 8, 1984, which was referenced in the NPRM, may be obtained from SIAI-Marchetti S.p.A., V-12070 via Idipendenza, 2.2108 Sesto Calenda, Italy; Telephone 0331 924842/923589. A copy of this Service Bulletin is contained in the Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. M. Dearing, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. J. Dow, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and modification, as necessary, of the tip tanks fuel tubes on certain SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes was published in the *Federal Register* on April 8, 1985 (50 FR 13815). Based on a request from a member of the public, an extension of the comment period to July 19, 1985, was published in the *Federal Register* on June 25, 1985 (50 FR 26218). Interested persons have been afforded an opportunity to comment on the proposal. One comment was received.

The commenter stated that the likelihood of the tip tank fuel line becoming unrestrained is remote. In the event the line does become unrestrained, the result would be a small increase in unusable fuel in that one tip tank and would result in slightly earlier fuel exhaustion in that tank. The commenter noted that the use of tip tanks was limited to level flight and use was prohibited during takeoff and landing.

In consideration of the commenter's arguments, the FAA is in agreement. Considering that the affected components are in auxiliary tanks that are depleted prior to the main tanks, are not used for takeoff and landing but are limited to use only in level flight, and that the failure mode gives the same indications expected when depleting the tip tank fuel in the normal manner, the FAA concludes that an unsafe condition is not present. Accordingly, the NPRM is being withdrawn.

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Aircraft, Safety.

Withdrawal of Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend §39.13 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub.) L. 97-449, January 12, 1983; and 14 CFR 11.89.

2. NPRM No. 85-CE-12-AD, published in the *Federal Register* on April 8, 1985 (50 FR 13815) is withdrawn.

Issued in Kansas City, Missouri, On August 28, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-21248 Filed 9-5-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

21 CFR Part 808

[Docket No. 77P-0272]

Exemption From Preemption of State and Local Hearing Aid Requirements; West Virginia's Application for Exemption

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements. This action responds to an application from the State of West Virginia. The Federal Food, Drug, and Cosmetic Act preempts State and local medical device requirements that are different from, or in addition to, Federal requirements. The act also provides that the agency may, by regulation, exempt State and local device requirements from preemption. Elsewhere in this issue of the *Federal Register*, FDA is announcing an opportunity for interested persons to request an oral hearing on the proposed regulation.

DATES: Comments by November 5, 1985. FDA proposes that any final rule based on this proposal be effective 30 days after its date of publication in the *Federal Register*.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of February 15, 1977 (42 FR 9286), FDA published final regulations establishing requirements for professional and patient labeling for hearing aid devices (21 CFR 801.420) and conditions for sale of hearing aids (21 CFR 801.421).

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rule that, after May 28, 1976, a State or political subdivision of a state may not establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act. Thus, any State or local hearing aid requirement that is different from, or in addition to, the requirements with respect to professional and patient labeling and conditions for sale of hearing aids established by FDA regulations is preempted under section 521(a) of the act.

Section 521(b) of the act provides that FDA may, upon application by a State or political subdivision, and by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local medical device requirement from preemption under such conditions as FDA may prescribe if the requirement is: (1) More stringent than an FDA requirement applicable to the device or (2) required by compelling local conditions, and compliance with it would not cause the device to be in violation of any requirement applicable under the act.

In the Federal Register of May 2, 1978 (43 FR 18661), FDA published final regulations establishing procedures for considering applications for exemption from preemption (21 CFR Part 808). In § 808.1(d) of the regulations, FDA provided examples of State or local requirements that are not regarded as preempted by section 521 of the act. In accordance with the regulations, the following requirements relating specifically to hearing aids are not preempted: (1) Requirements with respect to the licensing of hearing aid dispensers, audiologists, and physicians; (2) requirements that are substantially identical to FDA's requirements governing the labeling and conditions for sale of hearing aids; and (3) requirements established by Federal, State, or local agencies governing the expenditure of public funds for purchasing hearing aids and hearing health care services for the hearing impaired.

On March 19, 1985, the State of West Virginia applied for exemption from preemption for section 30-26-15, subsections (a) and (b) of article 26 of the West Virginia Code:

Article 26. Section 30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain his signature, his business address and the number of his license; the specifications as to the make and model of the hearing aid furnished; the full terms of the sale, including the date upon which the hearing aid was supplied to the person; the address of the West Virginia board of hearing-aid dealers; and the following statement: "Any person supplied with a hearing aid by a hearing-aid dealer licensed in this State has the right to return the hearing aid to the dealer within thirty days after receipt and rescind the purchase agreement except for reasonable fitting and examination charges if the hearing aid does not function properly, the hearing aid cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid." If a hearing aid which has been previously sold at retail is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe. A copy of such receipt shall be retained in the records of the licensee for a period of seven years following the issuance of such receipt.

(b) Each person supplied with a hearing aid by a hearing-aid dealer licensed pursuant to the provisions of this article shall have the right to return the hearing aid to the dealer within thirty calendar days of receipt and rescind the purchase agreement if the hearing aid does not function properly, cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid. If a hearing-aid dealer, pursuant to being notified by a person to whom he has supplied a hearing aid that the hearing aid does not function properly, does not satisfactorily correct the deficiency in the person's hearing or that the person is otherwise dissatisfied with the hearing aid, makes an adjustment to the hearing aid or advises the person to continue use of the hearing aid for the purpose of becoming more accustomed thereto or any other reason, the right of the person to whom the hearing aid was supplied shall be extended for thirty calendar days following the date upon which such adjustment was made or advisement was given.

Section 30-26-15, subsection (a) of the West Virginia Code, requires the hearing

aid dispenser to deliver to each person supplied with a hearing aid a receipt which shall state, among other things, whether the hearing aid is used or reconditioned. This requirement is more stringent than the Federal requirement (see § 801.420(c)(5)). FDA believes that West Virginia's more stringent requirement will not impose a significant burden on the hearing aid dispenser. In addition, although this information is also required to be included on the container in which the hearing aid is packaged and on a tag that is physically attached to the hearing aid, FDA believes that inclusion of the information in all three places will increase the likelihood that it is brought to the attention of the consumer. Therefore, FDA is proposing to exempt this portion of subsection (a) from preemption. As a condition to exemption, the agency is requiring that West Virginia apply the FDA definition of "used hearing aid" (21 CFR 801.420(a)(6)) to ensure uniformity.

Section 30-26-15, section (b) of West Virginia's Code, gives each person supplied with a hearing aid the right to return the hearing aid to the dealer within 30 calendar days of receipt or, if applicable, within 30 days after the date the hearing aid has been adjusted. FDA has determined that the provisions of subsection (b) are not provisions that relate to the safety or effectiveness of hearing aids and, therefore, are not preempted by section 521 of the act. Consequently, a request for exemption from preemption is not applicable. FDA notes that it granted the State of New York an exemption from Federal preemption for a provision of its General Business law for a 30-day return privilege. This exemption was granted, however, only because a New York court had declared the section to be preempted by FDA regulations.

Section 808.25(c) of FDA's regulations provides that, when the agency issues in the Federal Register a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the Federal Register a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed regulation. Elsewhere in this issue of the Federal Register, FDA is issuing such a notice.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an

environmental assessment nor an environmental impact statement is required.

Executive Order 12291

FDA has carefully reviewed the proposed rule under Executive Order 12291 and concludes that it does not meet any of the criteria of a major rule. Therefore, a regulatory impact analysis is not required. The proposal merely applies Part 808 of the regulations to an application from the Government of West Virginia. The proposal does not impose any new Federal requirements on any person. Similarly, no new requirements are established at the State level because the proposal allows an existing regulation to remain in effect.

Regulatory Flexibility Act

FDA certifies that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it does not impose any new requirements on any person. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, is not required.

Interested persons may, on or before November 5, 1985, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Exemption of specific State requirements, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR 808 is revised to read as follows:

Authority: Secs. 521, 701, 52 Stat. 1055-1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371); 21 CFR 5.10.

2. In § 808.98 by revising paragraph (a), to read as follows:

§ 808.98 West Virginia

(a) The following West Virginia medical device requirements are enforceable notwithstanding section 521(a) of the act because the Food and Drug Administration has exempted them from preemption: West Virginia Code, section 30-26-14 (b) and (c) and section 30-26-15(a).

Dated: August 15, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21250 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 808

[Docket No. 77P-0272]

Medical Devices; Opportunity for Oral Hearing on Proposed Action on West Virginia's Application for Exemption From Preemption for Hearing Aid Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of opportunity for oral hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for interested persons to request an oral hearing on a proposed rule that would grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements. The proposed rule is published elsewhere in this issue of the Federal Register.

DATE: Requests for an oral hearing by October 7, 1985.

ADDRESS: Written requests to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Section 808.25 (21 CFR 808.25) of FDA's regulations provides procedures for processing applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)). Section 808.25(c) provides that, when the agency issues in the Federal Register a proposed regulation either to grant or to deny an exemption from preemption, the agency also will issue in the Federal Register a notice of opportunity for interested persons to

request an oral hearing before FDA to present views on the application and the proposed regulation.

Elsewhere in this issue of the Federal Register, FDA is issuing a proposed regulation responding to an application from the State of West Virginia for exemption from preemption for section 30-26-15, subsections (a) and (b) of article 26 of the West Virginia Code. Therefore, in accordance with § 808.25(c), FDA is announcing an opportunity for interested persons to request an oral hearing on its proposal to grant exemption from Federal preemption for certain of West Virginia's hearing aid device requirements.

FDA advises that, under § 808.25(d), any request for a hearing is required to be submitted to the Dockets Management Branch (address above) and to include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and on the proposed regulation. Further, to ensure expeditious review of requests for an oral hearing and final action on the application for exemption and on the proposed rule, FDA has limited the period for requesting an oral hearing to the first 30 days of the comment period on the proposed regulation.

Under § 808.25(e), if a timely request for a hearing is made, FDA will review the request and will determine whether a hearing should be granted. If FDA determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a future issue of the Federal Register. The procedures that will govern any such oral hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under Part 15 of FDA's administrative practices and procedures regulations (21 CFR Part 15).

Interested persons may, on or before October 7, 1985, submit to the Dockets Management Branch (address above) written requests for an oral hearing on this matter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Requests are to be identified with the docket number found in brackets in the heading of this document. Received requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360(k))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 15, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 85-21251 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-01-M

PANAMA CANAL COMMISSION

35 CFR Part 133

Tolls for Vessels in Ballast

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission is proposing to revise its regulation in Title 35, Code of Federal Regulations, § 133.34 which pertains to tolls for vessels in ballast. This amendment will conform the present regulations to the rules for measurement of vessels for the Panama Canal pursuant to § 135.390 of 35 Code of Federal Regulations.

DATE: Written comments should be submitted on or before October 7, 1985.

ADDRESSES: Send comments to: Secretary, Panama Canal Commission, 2000 "L" Street, N.W., Suite 550, Washington D.C. 20036 or Panama Canal Commission, Office of General Counsel, APO Miami, FL 34011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone (202) 634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: The amendment of § 133.34 is necessary to conform to the "Rules of Measurement of Vessels" for the Panama Canal, 35 CFR Part 135, 41 FR 13583 of March 31, 1976. Prior to 1976, in order for a vessel to secure the reduced rate of toll for vessels in ballast without passengers or cargo, the amount of fuel a vessel could carry for its own consumption was 125 percent of the volume of its engine room as measured.

The 1976 amendments to Rules for Measurement of Vessels made it necessary to determine the actual volume of tanks or fixed compartments for the carriage of fuel which have been certified for the vessel's own use, as provided in § 135.390, "Spaces available for the carriage of fuel".

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when

implemented, would not have an annual effect on the economy of \$100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of Sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 133

Tolls, Vessels.

Accordingly, it is proposed to amend 35 CFR Part 133 as follows:

PART 133—[AMENDED]

1. The authority citation for Part 133 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds either—

(a) 125 percent of the volume of its engine room as measured and as shown on its Panama Canal tonnage certificate; or

(b) the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks of fixed compartments, including settling tanks, used for the storage or lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

Dated: August 8, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-21153 Filed 9-5-85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 430

[OW-FRL-2892-5]

Pulp, Paper, and Paperboard Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The EPA proposed effluent limitations guidelines on March 12, 1980, to limit the discharge of BOD₅ from acetate grade dissolving sulfite pulp mills in the pulp, paper, and paperboard industry (45 FR 15952). When final, these limitations will replace those portions of the effluent limitations guidelines promulgated in January 1977 which were remanded to the Agency by court order. EPA is today requesting comments on additional data and analyses that may be used in the final regulation for acetate grade pulp production in the dissolving sulfite pulp subcategory of the pulp, paper, and paperboard industry.

DATE: Comments must be submitted on or before October 7, 1985.

ADDRESSES: Comments should be submitted in triplicate to Wendy D. Smith, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The supplementary information and analyses will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear), Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy D. Smith at 202-382-7184 for information regarding the technical data.

SUPPLEMENTARY INFORMATION:

- I. Summary of Prior Rulemaking.
- II. Major Issues Raised in Comments on March 12, 1980 Proposal.
- III. Preliminary Data Analysis.
- IV. Solicitation of Comments.

I. Summary of Prior Rulemaking

On March 12, 1980, EPA proposed regulations to control the discharge of BOD₅ from acetate grade dissolving sulfite pulp mills in the pulp, paper, and paperboard industry (45 FR 15952). The comment period for the proposed regulation closed on May 12, 1980.

Comments were submitted by one company which had three facilities producing dissolving sulfite acetate grade pulp.

In assessing these comments, the Agency determined that new issues were raised that needed to be addressed. Because insufficient information was submitted with the comments to evaluate these issues, EPA requested additional information from two manufacturers of dissolving sulfite pulp on January 27, 1981. EPA received complete responses in April 1981.

The purpose of this notice is to make available for comment these additional data and the Agency's further analyses as they relate to major issues in the rulemaking. The Agency will consider comments submitted on this notice in promulgating the BOD5 effluent limitations for acetate grade production in the dissolving sulfite pulp subcategory.

II. Major Issues Raised in Comments on March 12, 1980, Proposal

The Agency has assessed the comments received before and after the regulations were proposed on March 12, 1980 and has analyzed all additional data received. Listed below are those issues which are of greatest concern to the commenter.

A. Incorrect Data Used

The commenter stated that EPA determined the BOD5 secondary waste load (SWL) for acetate grade pulp production in the dissolving sulfite pulp subcategory using data from a mill that does not produce acetate grade pulp. The commenter presented information supporting this claim.

B. Degree of Spent Sulfite Liquor Recovery

The commenter claimed that, in determining the proposed BOD5 effluent limitations, EPA erroneously used BOD5 secondary waste loads corresponding to a 95 percent spent sulfite liquor (SSL) recovery. The commenter claimed that this degree of SSL recovery is not possible and that mills producing acetate grade pulp generally achieve SSL recovery of approximately 90 percent.

C. Flow

One commenter claimed that the BPT flow basis of 66 kgal/ton is too low for acetate grade pulp production. The commenter stated that flows are greater for acetate grade pulp production than for production of other pulp grades because the ratio of the quantity of product produced compared to the amount of raw material processed (i.e.,

yield) is lower for acetate grade pulp production than for other grades of dissolving sulfite pulp production. The commenter stated that a more appropriate flow would be 84.5 kgal/ton, based on the flow rate of one producer of acetate grade dissolving sulfite pulp.

D. Proposed Limitations Are Too Stringent

One commenter stated that any additional cost of wastewater treatment cannot be borne by already marginal operations and proposed that effluent limitations be established at one of two levels: (1) At a long-term average level of 39.3 lb/ton based on the flow from a representative mill and a BOD5 secondary waste load corresponding to 90 percent SSL recovery or (2) at the current long-term average discharge of 70 lb/ton from one representative mill.

III. Preliminary Data Analysis

A. Incorrect Data used

EPA has determined that the pulp produced at one mill does not meet the definition of acetate grade pulp contained in the *Development Document for Effluent Limitations Guidelines for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink and Nonintegrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category* (U.S. EPA, December, 1976), the "Final BPT Development Document."

Therefore, EPA agrees that it is not appropriate to use data from this mill in the development of BPT BOD5 effluent limitations for acetate grade pulp production in the dissolving sulfite pulp subcategory.

B. Degree of Spent Sulfite Liquor Recovery

EPA found that, at present, 95 percent recovery of SSL has not been attained at mills where acetate grade pulps are produced. Secondary waste load BOD5 can be determined for three mills where acetate grades have been produced. However, it is inappropriate to base the acetate grade BOD5 SWL on data from two of the mills. At one mill, both papergrade and dissolving grade sulfite pulps were produced simultaneously with certain process streams being common to both operations. Without extensive sampling, it would not be possible to allocate that portion of the overall BOD5 loading that is attributable to dissolving sulfite pulp production. This mill does not currently produce acetate grade dissolving sulfite pulp; therefore, determination of its acetate grade BOD5 RWL is impossible.

At the second mill, extensive recycling and other internal controls are

employed that are more extensive than contemplated by EPA when BPT effluent limitations were first issued in 1977. EPA believes that reliance on SWL BOD5 data from this mill is, therefore, inappropriate.

Available data indicate that the average recovery of SSL at the third mill is 92.1 percent. EPA has recalculated the effluent limitations based on the SWL BOD5 corresponding to this third mill. EPA has also adjusted the SWL data for this mill to correspond to a SSL recovery of 95 percent. EPA has assessed the impact of basing BPT BOD5 effluent limitations on BOD5 secondary waste loads corresponding to two SSL recovery levels as discussed later in this notice.

C. Flow

Limited flow data for dissolving sulfite pulp production were available by grade at the time of development of BPT effluent limitations in 1976. Available data indicated that flows ranged from about 59 to 66 kgal/ton for the various grades of dissolving sulfite pulp produced. BPT effluent limitations for all grades were based on the highest average flow reported in the dissolving sulfite pulp subcategory. This flow was reported for a mill where cellophane grade pulp was produced. EPA agrees with the commenter that, in theory, unit flow (kgal/ton) at mills where acetate grade pulps are produced would increase as pulp yield decreases. The expected order from lowest to highest flow would be (1) papergrade, (2) nitration, (3) viscose, (4) cellophane, and (5) acetate.

EPA has assessed the impact of basing BPT BOD5 effluent limitations on three unit flows: (1) the original BPT flow basis of 66 kgal/ton, (2) the original BPT flow basis adjusted upward as the ratio of acetate yield to cellophane yield, or 72.4 kgal/ton, and (3) the flow recommended by the commenter, 84.5 kgal/ton.

D. Proposed Limitations Are Too Stringent

EPA has identified three possible flow bases for BPT and three possible BOD5 secondary waste load scenarios for the calculation of the BOD5 limitations for acetate grade dissolving sulfite pulp production. From the matrix of nine possible options, EPA chose three options for which final effluent limitations and costs would be developed. The Agency developed long-term average BOD5 final effluent concentrations for the three options by using the original BOD5 reduction equation presented on page 581 of the

Final BPT Development Document. Long-term average BOD5 final effluent mass loading were calculated by multiplying the final effluent BOD5 concentrations by the flows.

The resulting BOD5 limitations for the three options are presented below:

FINAL EFFLUENT BOD5 LEVELS

BPT option	Flow (1,000 gallons per ton)	SSL recovery (percent)	Long-term average BOD5 effluent levels (pounds per ton)
1	66.0	95	33.1
2	72.4	92.1	35.6
3	84.5	92.1	38.5

Option 1 represents the methodology used in the March 12, 1980 proposal; however, data for the mill which was not producing acetate grade pulp have been excluded. Effluent limitations for Option 2 are based on BOD5 secondary waste load data corresponding to the 92.1 percent SSL recovery rate from a representative mill producing acetate grade dissolving sulfite pulp. The flow for this option, 72.4 gal/ton, is based on the 66 gal/ton flow used in promulgating BPT for cellophane grade production but adjusted for yield differences between cellophane and acetate grade pulp production. Option 3 represents the actual flow and SSL recovery conditions at a representative mill.

EPA's preferred option is Option 2. Because this option is based on an actual SSL recovery rate for a representative mill and a flow rate adjusted for the difference in acetate and cellophane yields, the Agency believes that this option is most consistent with the BPT effluent limitations already in effect for the other segments of the dissolving sulfite pulp subcategory and for the entire industry.

After application of variability factors, the resulting maximum 30-day and maximum day effluent limitations corresponding to Option 2 are 63.4 and 121.8 lb/ton, respectively.

Upon compliance with Option 2 effluent limitations, the Agency estimates that total conventional pollutant removals will be 73.0 million kg/yr (160.8 million lbs/yr) of BOD5. These represent removals of 93 percent BOD5 from the raw waste levels of these pollutants.

EPA anticipates that the two dissolving sulfite pulp mills currently manufacturing acetate grade pulp will incur compliance costs. EPA expects that both mill would spend a total of approximately \$13.5 million (capital cost) and \$6.6 million (total annual cost) in upgrading their existing treatment

systems to attain the option 2 BOD5 effluent levels (1978 dollars).

IV. Solicitation of Comments

The Agency is making available all information and comments received after the March 1980 proposal and has also placed in the record all analyses related to the three regulatory options now being considered as the basis for BPT effluent limitations, including model mill cost estimates corresponding to each regulatory option and mill-specific compliance cost estimates. After evaluating comments received on this notice, the Agency will finalize the economic impact analysis done previously, taking into account the revised costs and using the same methodology.

EPA invites and encourages public participation in response to this notice of availability. Of particular interest to EPA are information and data relating to the following:

1. The appropriateness of the BPT TSS effluent limitations for acetate grade production in the dissolving sulfite pulp subcategory in light of the potential revision in the flow basis of the BPT BOD5 effluent limitations.

2. The reasonableness of EPA's mill-specific compliance cost estimates. EPA is interested in receiving information on the anticipated cost of compliance with the BPT BOD5 effluent limitations taking into account current BOD5 discharge levels at the two affected mills.

Dated: August 28, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-21294 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42070; T5H-FRL 2881-5]

Benzyl Butyl Phthalate; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to require certain environmental fate and effects tests for benzyl butyl phthalate (CAS No. 85-68-7). These are acute and chronic toxicity tests in freshwater and saltwater organisms, bioconcentration testing in the Eastern oyster, and testing for the fate of benzyl butyl phthalate in undisturbed sediments. Interested persons are invited to comment.

DATE: Comments must be submitted by November 5, 1985.

ADDRESS: Submit written comments, identified by the document control number OPTS-42070, in triplicate to: TSCA Public Information Office (TS-783), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street SW., Washington, D.C. 20460

Include the document control number (OPTS-42070) on all submissions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Interagency Testing Committee (ITC), in its Seventh Report, designated benzyl butyl phthalate (BBP) for priority consideration of environmental and health effects testing. In the Federal Register of October 30, 1981 (46 FR 53775), EPA published a preliminary decision not to propose a section 4(a) rule under the Toxic Substances Control Act (TSCA) to require environmental or health effects testing of BBP. This decision was based on the Agency's acceptance of a comprehensive testing proposal for phthalate esters and BBP from the Chemical Manufacturers Association (CMA) on behalf of the Phthalate Esters Program Panel (PEPP), and upon the actions of the National Toxicology Program (NTP) to perform additional studies in oncogenicity and reproductive effects of BBP. In a follow-up notice, published in the Federal Register of January 5, 1982 (47 FR 335), in response to public comment, EPA confirmed its decision not to propose rulemaking for BBP. In August 1984 a suit brought against EPA resulted in the ruling that negotiated testing agreements are not a legally adequate substitute for test rules in response to the designation of chemicals by the ITC (*NRDC v. EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)). Thus, EPA must now either initiate rulemaking or publish a decision not to do so. EPA is therefore issuing a proposed rule to obtain additional environmental fate and effects testing of benzyl butyl phthalate.

I. Introduction

A. ITC Recommendation

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.* 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of test rules under section 4(a) of the Act.

The ITC designated BBP for priority testing consideration in its Seventh Report, as published in the *Federal Register* of November 25, 1980 (45 FR 78432). The Agency responded to the ITC's designation, as required by section 4(e) of TSCA, by issuing a notice announcing its decision not to require testing of BBP in the *Federal Register* of October 30, 1981 (46 FR 53775). Part of the basis for this decision was a proposal by industry for, and the Agency's acceptance of, a negotiated testing agreement sponsored by the CMA/PEPP. The commitment by NTP to pursue health effects (oncogenicity and reproductive effects) testing of BBP was also a consideration in the decision to not require testing of this substance.

In response to late public comment, the Agency reexamined the legal and scientific concerns raised by its decision and responded to these comments in a subsequent notice, published in the *Federal Register* of January 5, 1982. The Agency's response was to reaffirm its decision not to test and to continue with the negotiated testing agreement. However, subsequent legal action now requires the Agency to either initiate rulemaking or publish a decision not to do so. Therefore, the Agency is now proposing a test rule for BBP.

B. Test Rule Development Under TSCA

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop appropriate test data if the Administrator finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (i) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (ii) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making section 4(a)(1)(A)(i) findings; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release. For the findings under sections 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the finding under section 4(a)(1)(A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules. The section 4(a)(1)(A) findings are discussed in the *Federal Register* of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300), and the section 4(a)(1)(B) findings are discussed in the *Federal Register* of June 5, 1981 (46 FR 30302).

In evaluating the testing believed by EPA to be needed for BBP, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of BBP under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) concerning BBP; and published and unpublished data available to the Agency, including data submitted by CMA obtained as a result of the negotiated testing agreement. Based on its evaluation, as described in this proposed rule, EPA is proposing environmental effects testing requirements for BBP under section 4(a)(1)(A).

II. Review of Available Data

A. Profile

As designated by the ITC, benzyl butyl phthalate is the *n*-butyl benzyl ester of 1,2-benzenedicarboxylic acid (CAS No. 85-68-7). It is a relatively water-insoluble liquid at room temperature.

B. Production And Use

Benzyl butyl phthalate is manufactured by Monsanto Polymer Products Co. under the trade name Santicizer 160* (Refs. 1 and 2). BBP is produced in excess of 100 million pounds per year (Ref. 1).

BBP is used as a plasticizer of synthetic resins, especially polyvinyl chloride, where its function is to make the plastic product flexible. BBP's main use is in floor coverings (Refs. 1 and 2).

C. Exposure And Release

BBP enters the environment primarily as a result of its manufacture or distribution and through processing during PVC blending operations (Ref. 1). Total losses of phthalate esters from these operations are estimated to be 2 to 4 percent; applying this factor to BBP's production leads to an estimate of 2 to 4 million pounds of BBP released per year (Ref. 3). Some leaching from finished plastic products may also occur, but at an expected low rate of release. A.D. Little (Ref. 4) estimated plastic product emissions of DEHP, another phthalate ester, to be about 1,000 to 3,000 pounds annually in the first year of product life; DEHP's production volume is about 3 times that of BBP. BBP is similar to DEHP but has a lower molecular weight, higher vapor pressure, and lower log P value which may slightly increase its rate of leachability relative to DEHP. However, PVC-plasticizer compatibility may mitigate migration of the BBP plasticizer from the plastic product, which nonetheless is still expected to be slow based on BBP's chemical/physical properties.

BBP's distribution in the environment is widespread, being found in many locations throughout the United States (Refs. 5 through 11). In areas where BBP is detected, ambient surface water concentrations reportedly average less than 1 to 10 ppb; concentrations in sediments are higher by a factor of 50-fold, and levels in biota average about 2.5 ppm (Refs. 6, 7, and 11).

D. Health Effects

The ITC recommended that BBP be tested for potential reproductive effects based on reported testicular effects of other phthalate esters. The ITC also recommended a more thorough evaluation of potential oncogenic effects based on results of a bioassay by the National Toxicology Program (NTP), which gave suggestive evidence of increased leukemia incidence among test animals (female rats). However, this study was considered inadequate by the ITC because of excessive mortality among the male rats exposed to the

compound. As noted in EPA's earlier response to this ITC recommendation, NTP has committed to performing reproductive effects tests. NTP will also be repeating the long-term cancer study for the male rats. The Agency believes that this testing will be sufficient to reasonably predict these effects and is not at this time proposing health effects testing for BBP.

E. Environmental Effects

As shown in Table 1 below, acute toxicity of BBP has been tested in three species each of freshwater and saltwater fish, in one species of saltwater and four species of freshwater invertebrates, and in five species of algae, three freshwater and two saltwater (Refs. 1, 12 through 23 and 38 through 40). Freshwater acute toxicity

values ranged from 100 ppb to 13.4 ppm, with the alga *Selenastrum capricornutum* being the most sensitive species tested. The no-observed-effect concentration for *S. capricornutum* was determined to be 100 ppb by one investigator and less than 70 ppb by another (Refs. 1 and 22). In saltwater testing, acute toxicity values ranged from less than 80 ppb to 3,000 ppb. The shiner perch and the English sole were the most sensitive species tested. For these species the 96-hour LC₅₀'s were about 500 ppb, with behavioral effects observed as low as 80 ppb; a no-effect level was not determined (Refs. 18 and 19).

Chronic toxicity testing has been performed for the fathead minnow: an early-life stage test with a maximum acceptable toxicant concentration

(MATC) determined to be 140 to 360 ppb (Ref. 22). Two chronic studies on *Daphnia magna* yielded an MATC of 260 to 760 ppb in one study and a geometric mean MATC of 630 ppb in the other (Refs. 1 and 23). A long-term (6-day) algal test on *Selenastrum capricornutum* gave a 6-day EC₅₀ of 200 ppb (Ref. 12). No chronic studies on saltwater organisms have been performed.

A bioconcentration study for BBP in the bluegill yielded a bioconcentration factor of 683 in that fish species, with a half-life for depuration (elimination of the compound by the fish after transfer to clean water) of between 1 and 2 days (Ref. 22). Based on results on another phthalate ester, DEHP, bioconcentration factors in molluscs are expected to be much higher than those seen in fish (Ref. 24).

TABLE 1.—SUMMARY OF ENVIRONMENTAL TOXICITY DATA FOR BBP

Organism	Test	Effect level (mg/L)	No observed lethal effect level (mg/L)	Reference No.
Fathead minnow (<i>Pimephales promelas</i>) ¹	96-hr LC ₅₀	1.5	0.44	15
Fathead minnow (<i>Pimephales promelas</i>) ¹	Chronic (ELS)	0.14-0.36		22
Rainbow trout (<i>Salmo gairdneri</i>) ¹	96-hr LC ₅₀	0.82	0.28	14
Bluegill (<i>Lepomis macrochirus</i>)	96-hr LC ₅₀	1.7	0.36	1
Sheepshead minnow (<i>Cyprinodon variegatus</i>)	96-hr LC ₅₀	3.0	1.0	1
Shiner perch (<i>Cymatogaster aggregata</i>)	96-hr LC ₅₀	0.51		19
English sole (<i>Pleuronectes vetulus</i>)	96-hr LC ₅₀	0.55	0.3	20
Midge (<i>Paratanytarsus parthenogenetica</i>)	48-hr LC ₅₀	13.4	3.2	39
Midge (<i>Paratanytarsus tentans</i>)	48-hr LC ₅₀	>3.6		40
Midge (<i>Chironomus tentans</i>)	48-hr LC ₅₀	3.6		40
<i>Daphnia magna</i>	48-hr LC ₅₀	3.7	1.0	1
<i>Daphnia magna</i> ¹	Chronic	0.63		23
<i>Daphnia magna</i>	Chronic	0.26-0.79		1
Mysid Shrimp (<i>Mysidopsis bahia</i>)	96-hr LC ₅₀	0.9	0.4	1
Alga (<i>Selenastrum capricornutum</i>)	96-hr LC ₅₀	0.11	<0.07	22
Alga (<i>S. capricornutum</i>)	96-hr LC ₅₀	0.4	0.1	1, 38
Alga (<i>S. capricornutum</i>) ¹	6d EC ₅₀	0.2		12
Alga (<i>Microcystis aeruginosa</i>)	96-hr LC ₅₀	1000	560	1, 38
Alga (<i>Navicula pelliculosa</i>)	96-hr LC ₅₀	0.8	0.3	1, 38
Alga (<i>Skeletonema costatum</i>)	96-hr LC ₅₀	0.6	0.1	1, 38
Alga (<i>Dunaliella tertiolecta</i>)	96-hr LC ₅₀	1.0	0.3	1, 38

¹ Data developed under the CMA/PEPP-EPA negotiated testing agreement.

F. Chemical Fate

Because of its chemical/physical properties of moderately low water solubility, very low vapor pressure, and high log P, BBP is expected to partition into the aquatic environment, especially into sediments and also to accumulate in biota (Refs. 1 and 25 through 27). However, metabolism, which occurs with other phthalate esters, and biodegradation are expected to moderate the amount of BBP found in organisms and in the environment (Refs. 1 and 28 through 37). Under favorable aerobic conditions, BBP is biodegradable with a half-life of 2 to 4 days for primary degradation and 2 to 4 weeks for ultimate degradation (Refs. 1, 28 and 29). BBP is expected to degrade anaerobically in sediments; however, like the other phthalate esters, this

process is expected to be fairly slow. Half-lives for anaerobic degradation of selected phthalate esters are on the order of months and BBP is expected to be similarly persistent in sediments (Refs. 30 and 31). The specific degree of BBP's persistence in sediments is, however, unknown.

III. Findings

EPA is basing its proposed environmental effects testing of BBP on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that the manufacturing and processing of BBP may present an unreasonable risk of acute or chronic toxicity to environmental species, based on data presented in Unit II.E. above showing that BBP is highly acutely toxic (less than 1 ppm acute toxicity) to aquatic organisms and that it

bioconcentrates in fish and has a high bioconcentration potential in molluscs. BBP is produced in large quantities and enters the environment and has been detected in many locations throughout the United States as discussed in Units II.B. and C. above. The concentrations of BBP detected in the environment are low (less than 1 to 10 ppb). However, in the toxicity testing which has been performed, BBP is highly acutely toxic (500 ppb in certain sensitive fish species, 900 ppb in the mysid shrimp, and 70 to 100 ppb for a freshwater alga), and BBP also has a high potential to bioconcentrate, especially in shellfish. The Agency believes that these results are serious enough to make even the reported low levels of BBP in the environment of potential concern. BBP also appears to accumulate in sediment

and may be persistent in that environmental medium. The Agency has further determined that data are inadequate to fully characterize the acute and chronic effects to freshwater and saltwater species of fish and invertebrates or to characterize the bioconcentration potential of BBP in molluscs as discussed in Unit II.E. above and that testing is necessary to develop these data. The Agency has also determined that data are inadequate to characterize the fate of BBP in sediments, as discussed in Unit II.F. above, and that testing is necessary to develop these data.

IV. Proposed Rule

Testing is needed to establish whether there exists an unreasonable risk to fresh and saltwater aquatic species due to exposure to benzyl butyl phthalate releases to the environment.

The proposed tests involve both freshwater and saltwater organisms and include acute tests, acute-chronic ratios in aquatic animals, and bioconcentration tests in aquatic animal species. The proposed tests also include a test for the fate of BBP in sediments. These test data will ensure that the Agency has sufficient data to support any necessary regulatory actions under TSCA or the Clean Water Act and will be relevant to a determination whether BBP presents an unreasonable risk of injury to the environment. These data would be sufficient to establish water quality criteria for protecting aquatic life, under section 304(a)(1) of the Clean Water Act, as described in the *Federal Register* of November 28, 1980 (45 FR 79341).

A. Proposed Testing

The minimum data set that the Agency considers necessary to evaluate the hazard posed to aquatic life by BBP and to establish Ambient Water Quality Criteria for this substance is given below.

These tests provide the minimum amount of data which will yield a statistically sound estimate of acceptable acute and chronic concentrations in the water. The values derived through use of this data set will generally protect 95 percent of a population; a lesser quantity of data would not have this level of confidence or protection. (See the Water Quality Criteria Guidelines and the Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic Organisms and their Use for Additional information.)

1. Freshwater acute tests with at least one species of freshwater animal in at

least eight different families such that all of the following are included:

a. The family Salmonidae in the class Osteichthyes.

b. One other family (preferably a commercially or recreationally important warmwater species) in the class Osteichthyes, e.g., bluegill, channel catfish, etc.

c. One other family in the phylum Chordata, e.g., fish, amphibian, etc.

d. A planktonic crustacean, e.g., cladoceran, copepod, etc.

e. A benthic crustacean, e.g., ostracod, isopod, scud, grass shrimp, crayfish, etc.

f. An insect, e.g., mayfly, dragonfly, damselfly, stonefly, caddisfly, mosquito, midge, etc.

g. A family in a phylum other than Arthropoda or Chordata, e.g., Rotifera, Annelida, Mollusca, etc.

h. A family in any order of insect of any phylum not already represented.

Acute toxicity data on the rainbow trout, fathead minnow, bluegill, *Daphnia magna* and midge are currently available which satisfy requirements 1.a., b., c., d., and f. above (Refs. 12 through 15). The Agency is proposing testing on three additional species such that the requirements of 1.e., g., and h. are also satisfied. This testing would include, for 1.e., a benthic crustacean (e.g. the scud or another acceptable species); for 1.g., a nonarthropod, nonchordate (e.g., the rotifer or another acceptable species); and for 1.h. an insect or other phylum member not already represented (e.g., the mayfly or another acceptable species).

2. Acute-chronic ratios with species of aquatic animals in at least three different families, provided that of the three species:

a. At least one is a fish.

b. At least one is an invertebrate.

c. At least one is an acutely sensitive freshwater species (the other two may be saltwater species).

As its name implies, this is a testing requirement to provide both acute and chronic toxicity values for a given test species. The acute-chronic ratio is calculated as the relationship between the acute and chronic toxicity values. This value may then be used to calculate a "final chronic value."

The Agency has acceptable data on *Daphnia magna* which satisfy requirement 2.b. above. EPA is proposing chronic testing on the rainbow trout based on data on DEHP which indicate the rainbow trout to be among the most sensitive freshwater fish species (Ref. 33). This testing, together with existing acute toxicity for rainbow trout, will satisfy requirements 2.a. and c. above. Furthermore, this testing, with the testing being proposed

in Unit IV.A.6., will provide the overall requirement of three acceptable species tested. Data on acute toxicity testing of BBP in fish and chronic testing of DEHP in fish also indicate that length of exposure to phthalate esters is important to properly evaluate their toxic effects (Refs. 33 and 37). The Agency is proposing that the freshwater chronic testing be an early-life-stage (embryo/larvae) test on rainbow trout, extended an additional 60 days posthatch beyond the usual 60-day posthatch exposure for rainbow trout fry in this test, which is described in the OTS Environmental Effects Test Guidelines.

3. At least one acceptable test with a freshwater alga or vascular plant. If plants are among the aquatic organisms that are most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

The Agency has acceptable test results on three species of freshwater algae which satisfy this requirement. No additional testing is proposed for freshwater plants or algae.

4. At least one acceptable bioconcentration factor determined with an appropriate freshwater species, if a maximum permissible tissue concentration (from the U.S. Food and Drug Administration) is available.

The Agency is not proposing bioconcentration testing on a freshwater organism. There is a bioconcentration factor value of 663 for the bluegill in the literature (Ref. 22).

5. Saltwater acute tests with at least one species of saltwater animal in at least eight different families such that all of the following are included:

a. Two different in the phylum Chordata.

b. A family in a phylum other than Arthropoda or Chordata.

c. Either the Mysidae or Penaeidae family.

d. Three other families not in the phylum Chordata.

e. Any other family.

The Agency has data available on three species of saltwater fish and the mysid shrimp which satisfy requirements 4.a., c. and e. above (Refs. 18 through 21). EPA is proposing testing to satisfy requirements 4.b. and d. above. This testing would include for 4.b. a nonarthropod, nonchordate (e.g., the Eastern oyster or another acceptable species) and for 4.d., three other nonchordates (e.g., the Pacific oyster, an amphipod, and a Penaid shrimp or any other acceptable species).

6. Acute-chronic ratios with species of aquatic animals in at least three

different families provided that of the three species:

- a. At least one is a fish.
- b. At least one is an invertebrate.
- c. At least one is an acutely sensitive saltwater species (the other two may be freshwater species).

The Agency has no chronic data on saltwater organisms and is proposing acute-chronic testing on an acutely sensitive saltwater species. This will satisfy requirement 6.c. above. Requirement 6.a. and b. will be satisfied by the testing proposed under Unit IV.A.2. above.

7. At least one acceptable test with a saltwater alga or vascular plant. If plants are among the aquatic organisms most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

The Agency has acceptable data on two species of saltwater algae. No additional testing is being proposed for saltwater plants or algae.

8. At least one acceptable bioconcentration factor determined with an appropriate saltwater species, if a maximum permissible tissue concentration is available.

The Agency is proposing bioconcentration testing for BBP in the Eastern oyster. There is no permissible tissue concentration set by the U.S. Food and Drug Administration for BBP. Strictly speaking, this testing is therefore not required in the development of Ambient Water Quality Criteria. However, this testing is believed necessary under TSCA to define the potential of BBP to bioconcentrate in molluscs in order to be able to reasonably predict the fate and effects of BBP in the environment.

The Eastern oyster is proposed because it is a valuable and abundant commercial species, its biology has been well studied, there is a history of bioconcentration testing with this organism, and there are available well-defined protocols for bioconcentration testing in the oyster (see the OTS Environmental Effects Test Guidelines).

9. Chemical fate testing to examine the fate of BBP in undisturbed sediments.

The Agency is proposing that radiolabeled BBP be introduced into a simulated natural system of water and sediments and that a chemical fate analysis of parent compound and any transformation products be performed for the simulated environmental compartments. For guidance the Agency recommends OTS's Experimental Marine Microcosm Test Protocol; however, the Agency is not requiring that this test necessarily be run in saltwater.

B. Test Substance

EPA is proposing that BBP of at least 99-percent purity be used as the test substance. BBP of this purity is commercially available at nominal cost. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to BBP itself. Radiolabeled ¹⁴C-BBP will be needed for the bioconcentration and the chemical fate testing.

C. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) or TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that there are insufficient data and experience to reasonably determine or predict the environmental effects and fate resulting from the manufacture and processing of BBP, EPA is proposing that persons who manufacture and process BBP, or intend to manufacture or process BBP, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the environmental effects and chemical fate testing requirements contained in this proposed rule. The end of the reimbursement period is proposed to be 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for BBP.

D. Test Rule Development

As discussed in the Federal Register of May 17, 1985 (50 FR 20652), the

Agency intends to use single-phase rulemaking for most rules promulgated under TSCA section 4(a) and to use two-phase test rule development procedures for rulemaking where no well-accepted test methodology is available for inclusion in a proposed test rule. In the case of BBP, there is no OTS test guideline or other established methodology for the type of chemical fate testing the Agency believes is needed for BBP. Therefore, test rule development for BBP will be conducted according to the two-phase process described in 40 CFR Part 790.

Under the two phase process, this Phase I test rule is being proposed for BBP specifying the test substance, the effects for which test data are to be developed, and which persons are subject to the rule. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. In Phase II, following promulgation of the final Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects specified in the Phase I rule or to obtain exemptions from the testing requirements. Within 30 days after the effective date of the final Phase I test rule, manufacturers and importers of BBP must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days after the effective date of the final Phase I test rule. After an opportunity for public comment, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the chemical specific test standards and schedules for the tests required by the Phase I rule. Testing will also be subject to EPA's generic TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792). Persons who submit study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modification to the adopted study plans can be made only with EPA approval.

Processors of BBP, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans or to conduct testing unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the costs of testing on to processors through the pricing of BBP.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In

accordance with those regulations, any manufacturer or processor subject to the Phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under the rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

E. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA good laboratory practice (GLP) standards, which appear in 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the *Federal Register* as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of the Phase I final test rule, an exporter of BBP must report to EPA the first annual export or intended export of BBP to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical

substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for BBP. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations thereof, and that the TSCA GLP standards and the test standards established in the rule are being complied with.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16 of TSCA. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Issues for Comment

EPA has proposed in this rule chemical fate testing (fate of BBP in undisturbed sediments) for which a specific test protocol is not available. However, the Agency believes that considering BBP's tendency to partition into sediments, this information is necessary to reasonably predict BBP's environmental fate. The Agency believes that the OTS Experimental Microcosm Test Protocol provides sufficient guidance for the development of study plans for the performance of this testing. EPA solicits comment on the adequacy of the proposed testing guidance or on other testing methods for evaluating the fate of BBP in sediments.

VI. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis. This consists of evaluating each chemical or chemical group on four principal market characteristics: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis, along with the consideration of the costs of the required tests, indicate whether the possibility of a significant adverse economic impact exists. Where the indication is negative, no further economic analysis is done for the chemical substance or group. However, for those chemical substances or groups where the Level I analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted. This Level II analysis attempts to predict more precisely the magnitude of the expected impact.

Total testing costs for the proposed rule for BBP are estimated to range from \$97,470 to \$280,435. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from \$24,970 to \$71,845. Based on a projected 1985 production of at least 100 million pounds, the unit test costs range

from 0.025 to 0.072 cents per pound. In relation to the current list price of 53 cents per pound for BBP, these costs are equivalent to 0.05 to 0.14 percent of price.

The Level I economic analysis (Ref. 2) indicates that the potential for adverse economic effects due to the estimated test cost is low. This conclusion is based on the following observations: (1) Demand for BBP appears relatively inelastic due to the plasticizer's favorable performance characteristics; (2) the market expectations for BBP are favorable; and (3) the estimated unit test costs are very low. A Level II analysis is not necessary.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)," can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VIII. Availability of Test Guidelines

The OTS, OECD, and FIFRA guidelines cited in this proposed test rule are available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4657). Revised OTS guidelines are identified in the Federal Register of October 11, 1984 (49 FR 39911). The OTS guidelines for environmental effects are within NTIS publications PB 82-232992 and PB 83-257709 which cost \$67.00 and \$7.00, respectively. The OTS guideline cited for the proposed fate in sediments testing, "Experimental Marine Microcosm Test Protocol," is NTIS publication PB 83-230854, which costs \$10.00.

The FIFRA Pesticides Registration Guideline, "Proposed Data Requirements for Hazard Evaluation: Wildlife and Aquatic Toxicity," is NTIS publication PB 83-153916 and costs \$11.50. The publication "OECD Test Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms," is also available from NTIS as PB 83-

153908 and costs \$80.00. The "Water Quality Criteria Guidelines" were published in the Federal Register on November 28, 1980 (45 FR 79341).

IX. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting in Washington, D.C. Persons who wish to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, D.C.: (554-1404); Outside the U.S.A. (operator 202-554-1401), by October 21, 1985. The meeting will not be held if members of the public do not indicate that they wish to make oral presentations. This meeting will be scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether the meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

X. Rulemaking Record

EPA has established a record for this rulemaking. (OPTS-42070). This record includes basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Support Documentation

Federal Register notices pertaining to this rule consisting of:

- (1) Notice containing the ITC designation of BBP to the Priority List (45 FR 79432; November 25, 1980).
- (2) Notice of the Agency's response to the ITC on Alkyl Phthalates and BBP (46 FR 53775; October 30, 1981).
- (3) Notice of the Agency's follow-up response to the ITC on Alkyl Phthalates and BBP (47 FR 335; January 5, 1982).

(4) Notice of interim final rule on two phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(5) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

B. References

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XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact

Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the order, i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked, "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals.

Dated: August 29, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for 40 CFR Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.850 is added to read as follows:

§ 799.850 Benzyl butyl phthalate.

(a) *Identification of test substance.*

(1) Benzyl butyl phthalate (BBP; CAS No. 85-68-7) shall be tested in accordance with this section.

(2) BBP of at least 99 percent purity shall be used as the test substance in all tests.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process BBP after the effective date of this section (30 days after the publication date of the final rule in the *Federal Register*) to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in this section, subpart A of this Part and Part 790 of this chapter for two-phase rulemaking.

(c) *Chemical fate testing—Fate in undisturbed sediments—(1) Required testing.* An environmental fate test shall be conducted with BBP using natural waters and sediments representative of aquatic environments that may be exposed to BBP. Partitioning, transformation, and degradation rates of BBP are to be determined using radiolabeled test compound. The length of the test shall not be less than 30 days.

(2) *Study plans.* The Agency has not published specific guidelines for the type of environmental fate test suggested for BBP. For guidance the OTS Experimental Marine Microcosm Test Protocol and Support Document available from NTIS (PB 83-230854) should be consulted.

(d) *Environmental effects testing—(1) Aquatic freshwater acute toxicity—(i) Required testing.* Acute toxicity tests shall be conducted with BBP with freshwater animals in three different species, provided that of the four species:

(A) At least one is a benthic crustacean.

(B) At least one is from a phylum other than Arthropoda or Chordata.

(C) At least one, but not from Chordata, is from a family in any order of insect of any phylum not already represented.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82-232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems; the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic

Organisms (PB 83-153908); and the Water Quality Criteria Guidelines, published in the *Federal Register* on November 28, 1980 (45 FR 79341).

(2) *Aquatic freshwater chronic toxicity—(i) Required testing.* Chronic toxicity testing shall be conducted with BBP on the rainbow trout. The test shall be the early-life-stage test, with the exposure of the fry to BBP extended to 120 days posthatching.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82-232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908) and the Water Quality Criteria Guidelines.

(3) *Aquatic saltwater acute toxicity—(i) Required testing.* Acute toxicity tests shall be conducted with BBP with saltwater animals in four different species, provided that of the four species:

(A) At least one species is from a family in a phylum other than Arthropoda or Chordata.

(B) At least three other species are from three other families not in the phylum Chordata.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for acute toxicity testing, published by NTIS (PB 82-232992), should be consulted. Additional guidance may be obtained by consulting the OECD Test Guidelines for Effects on Biotic Systems, and the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908), and the Water Quality Criteria Guidelines.

(4) *Aquatic saltwater chronic toxicity—(i) Required testing.* Toxicity testing shall be conducted with BBP to determine an acute-chronic ratio with at least one acutely sensitive species of saltwater aquatic animal.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines for chronic toxicity testing, published by NTIS (PB 82-232992), should be consulted. Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908) and the Water Quality Criteria Guidelines.

(5) *Saltwater Bioconcentration Testing—(i) Required testing.* A bioconcentration factor test shall be conducted with BBP with the Eastern oyster.

(ii) *Study plans.* For guidance in preparing study plans, the OTS Environmental Effects Test Guidelines, published by NTIS (PB 82-232992), should be consulted.

Additional guidance may be obtained by consulting the FIFRA Guidelines for Hazard Evaluation: Wildlife and Aquatic Organisms (PB 83-153908), the OECD Test Guidelines for Degradation and Accumulation, and the Water Criteria Guidelines.

(e) *Availability of test guidelines.* The OTS Environmental Effects Test Guidelines and the OTS Experimental Marine Microcosm Test Protocol and Support Document cited in this proposed rule are available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4650).

(Approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 85-21295 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Medical Facility Construction and Modernization: Requirements for Provision of Services to Persons Unable to Pay

AGENCY: Public Health Service, HHS.

ACTION: Proposed rules.

SUMMARY: This notice proposes revisions to the rules currently governing how health care facilities assisted under Titles VI and XVI of the Public Health Service Act fulfill the assurance, given in their application for assistance, that they would provide a reasonable volume of services to persons unable to pay. Comment on the current rules and operational experience with them have indicated the need to revise the current requirements as they pertain to publicly owned facilities.

DATE: Written comments must be received on or before November 5, 1985.

ADDRESS: Comments must be in writing and be sent to: Mr. Richard Ashbaugh, Acting Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Rockville, Maryland 20857, Attention: Martin J. Frankel.

Comments will be available for public inspection during the hours of 8:00-5:30 at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Ashbaugh (301) 443-6560.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes below amendments to the rules governing what is popularly known as the Hill-Burton uncompensated services program. Health care facilities covered by the program received construction assistance under two titles of the Public Health Service Act—Title VI (the "Hill-Burton Act", 42 U.S.C. 291, *et seq.*) and Title XVI (42 U.S.C. 300 q, *et seq.*). As a condition of such assistance, facilities assisted under Title VI were required to give what is now known as the uncompensated services assurance. Under section 603(e) of the Act (42 U.S.C. 291c(e)), the Secretary was authorized to issue regulations requiring the following assurance.

Such regulations may also require that before an application is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that . . . (2) there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.¹

Regulations requiring the assurance were issued shortly after enactment of Title VI in 1946. See 12 FR 6176 (September 16, 1947). The regulatory standard for compliance with the assurance was general. Beginning in 1972, however, a series of regulatory and statutory developments occurred which culminated in the detailed requirements of the present regulations, which were issued in 1979. The objective of the amendments proposed below is to simplify and increase the flexibility of the regulations as they apply to publicly owned facilities. Because the requirements of the existing regulations are essential to an understanding of the context and significance of the proposed amendments, the pertinent sections are summarized below.

¹ The assurance required by statute of Title XVI assisted facilities, of which there are only 38, was as follows . . . reasonable assurance that at all times after such application (for Title XVI assistance) is approved . . . (ii) there will be made available in the facility or portion thereof to be constructed, modernized or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from financial viewpoint. Section 1621(b)(1)(k), 42 USC 300a-1(b)(1)(k), as redesignated by Pub. L. 96-79.

1. Summary of Existing Regulations

Following extensive public comment, in 1979 the Secretary issued the current rules, which are codified at 42 CFR Part 124, Subpart F. 44 FR 29372 (May 18, 1979).

In part, these regulations establish a fixed dollar level compliance quota, which is 3% of the facility's operating costs (less Medicare and Medicaid reimbursement) or 10% of the Federal financial assistance it received, whichever is less. A facility that does not meet its annual quota is required to make up the deficit in the amount of uncompensated services provided in later years. In addition, the facility must institute an affirmative action plan designed to prevent recurrence of the deficit. 42 CFR 124.504. A facility may also get credit for "excess"—that is, uncompensated services provided over and above its annual quota—and credit that excess against its quota in a future year. The 10% compliance level, and the deficits and excesses, are required to be adjusted by a factor that reflects inflation, the so-called "inflation factor." 42 CFR 124.503. In each case, however, the facility can only count a portion of the cost of the service provided toward the quota, the so-called "allowable credit." Facilities are required to exclude third party payments (including payments from Medicare and Medicaid) from the quota, and also may not count towards the quota the differential between the amount of third party reimbursement and allowable credit where they are required by the third party program to accept the reimbursement as payment in full for service. In addition, services disallowed as unnecessary by a Professional Standards Review Organization (PSRO) must also be excluded. 42 CFR 124.509.

The current regulations establish national eligibility criteria, based on the poverty income guidelines presently issued by the Department. 42 CFR 124.506. The criteria consider only income, not resources, and a mandatory procedure for calculating income is provided. *Id.* Facilities are given limited discretion to decide how to allocate their quota or uncompensated services among eligible persons. 42 CFR 124.507. Facilities can credit services toward their quota only if they make an eligibility determination within two working days of a request for uncompensated services. 42 CFR 124.508.

The 1979 regulations contain explicit requirements for notice, including that written notice be given to each person seeking service in the facility. 42 CFR 124.505(d). In addition, facilities are

required to publish and post notices and under certain circumstances to provide notice to the local health systems agency (HSA). 42 CFR 124.505. The regulations contain a number of reporting and recordkeeping requirements.

II. Objectives and Policies of the Proposed Rules

The basic objective of the present regulations is to assure that recipients of Titles VI and XVI funds who gave the uncompensated services assurance provide those services within the context of sound planning for and management of the delivery of health care services. The proposed changes eliminate unnecessary administrative burdens imposed on publicly owned and operated facilities.

Under the current regulations, public facilities, including charity hospitals, public health centers and public health laboratories, are subject to the same procedural requirements as other facilities. Many public facilities exist principally for the purpose of providing services to the indigent and either do not charge or provide services on a subsidized basis. The Secretary believes that it is anomalous to require a facility, which is in the business of providing free or below cost care to the indigent, either to restructure its entire method of operating or face years of accumulating deficits to accommodate what may be a comparatively small Hill-Burton obligation. Thus, the Department is proposing below a compliance alternative for those public facilities which qualify to address these problems.

The criteria set out at proposed § 124.513(b) are intended to provide an objective means of identifying those public facilities which do not charge for services or whose primary purpose is to serve the indigent and which, by virtue of this purpose, in fact provide significant amounts of charity care. The criterion at § 124.513(b)(4) establishes a threshold of operational revenue these facilities receive from State or local tax appropriations, which is intended to provide an indication of significant community support for their public service or charitable purpose. The proposed threshold of 10% is based on American Hospital Association Survey Data, 1982, produced by L.C.F., Inc. Survey data on 1,744 hospitals operated by units of State or local government indicate that 90% of the facilities received less than 10% of their operating revenue from tax appropriations. Based on these data, the Department believes that 10% or more of revenue from tax

appropriations signifies a substantial proportion of support from this source. The Department solicits comments on whether there are other criteria that would most accurately identify the facilities the exception is intended to cover. Similarly, suggestions for improvement of the qualification procedure set out at proposed § 124.513(c) are solicited, including the use of audited financial statements. For example, should the Department consider other than audited financial documents, and should it require such document for the last three years rather than "the most recent three years available"?

Following initial qualification in accordance with the proposed procedure, facilities are required by proposed § 124.510(c)(1) to submit annually a certification that there has or has not been a change in the factors on which the initial qualification was based. The process envisions a one-year period of effectiveness for the initial qualification and for each subsequent certification.

However, to allow for situations in which a facility's status changes during a year, and to prevent inadvertent lapses of certifications because of processing difficulties, certifications remain in effect until they are withdrawn by the Secretary. See proposed § 124.513(d)(1).

It is possible that some public facilities have incurred deficits under the present regulations. This may occur because a facility finds it difficult to comply with some procedural requirements of existing regulations, not because the facility does not deliver large amounts of free care. The Secretary believes it would be anomalous to permit those facilities to meet their future obligation through the certification process and at the same time require them to make up their past deficits through compliance with the current regulatory procedures. Therefore, proposed § 124.513(d)(2) provides such facilities with a choice: they may make up their deficits conventionally in accordance with the current procedural requirements; or alternatively, they may make it up by providing an additional year of uncompensated services through the certification process for each year of deficit incurred. If the latter alternative is selected, however, the facility must still provide services on an uncompensated basis to those individuals who were improperly denied uncompensated services during the deficit period. That is, the enforcement provisions of proposed § 124.511(b)(2)

apply to certified public facilities at all times during their period of obligation.

A change in the reporting and recordkeeping requirements of the present regulations is also proposed to carry out the new policies set out at proposed § 124.513. The proposal's annual certification provision for public facilities represents a major reduction in the reporting and record maintenance requirements for those facilities so certified. The procedures for certification of public facilities do not require submission of detailed information nor do they necessitate the maintenance of additional records. However, as required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirements of proposed §§ 124.513(c) and 124.510(c). Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

Regulatory Flexibility Act and Executive Order 12291

The Department has determined that the impact would not approach the annual \$100 million threshold for major economic consequences as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. section 605(b)), the Secretary certifies that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 124

Grant programs—Health, Health facilities, Loan programs—Health, Low income persons, Reporting and recordkeeping requirements.

Dated: August 6, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 9, 1985.

Margaret M. Heckler,

Secretary.

It is proposed to amend Subpart F of 42 CFR Part 124 as follows:

PART 124—[AMENDED]

1. The authority citation for Part 124 is revised to read:

Authority: Secs. 215, 1620(3), Public Health Service Act, as amended; 58 Stat. 690, 93 Stat. 633 (42 U.S.C. 216, 300s(3)).

2. The Table of Contents is amended by adding at the end thereof the following:

124.513 Public facility compliance alternative.

§ 124.501 [Amended]

3. Paragraph (b)(1) of § 124.501 is amended by removing the phrase, "Except where the deficit and excess compliance provisions provide for a longer or shorter period", and inserting in lieu thereof, "Except as otherwise herein provided".

§ 124.510 [Amended]

4. In § 124.510, the heading of paragraph (a) is revised to read, "Reporting requirements for facilities not covered by § 124.513."; the heading of paragraph (b) is revised to read, "Record maintenance requirements for facilities not covered by § 124.513."; and a new paragraph (c) is added, to read as follows:

(c)(1) *Reporting requirements for public facilities.* A facility under § 124.513 shall comply with paragraph (a)(4) of this section and shall submit within 90 days of the close of its fiscal year, as appropriate:

(i) A certification, signed by the responsible official of the facility, that there has been no material change in the factors upon which the certification under § 124.513 was based; or

(ii) A certification, signed by the responsible official of the facility and supported by appropriate documentation, that there has been a material change in the factors upon which the certification under § 124.513 was based.

(2) *Record maintenance requirements for public facilities.* A facility certified under § 124.513 shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the requirements of this subpart in any fiscal year, including those documents submitted to the Secretary under § 124.513(c). A facility shall maintain these records until 180 days following the close of the Secretary's investigation under § 124.511(a).

5. Section 124.511 is amended as follows:

a. Paragraph (a)(3) and (b)(2) are revised to read as follows:

§ 124.511 Investigation and enforcement.

(a) * * *

(3) When the Secretary investigates a facility, the facility, including a facility certified under § 124.513, shall provide to the Secretary on request any documents, records and other information concerning its operations that relate to the requirements of this subpart.

(b)(1) * * *

(2) A facility, including a facility certified under § 124.513, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance.

6. A new § 124.513 is added, to read as follows:

§ 124.513 Public facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification

under this section if all of the following criteria are met:

(1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).

(2) It exists, in major part, for the purpose of providing care to the indigent on a free or below cost basis, as evidenced by provision therefor in its corporate charter or comparable organizational document.

(3) It provides health care services without charge or at a substantially reduced rate to persons who are determined by the facility, based on objective criteria, to be unable to pay therefor.

(4) It received, for the three most recent fiscal years for which audited financial statements are available, at least 10 percent of its total operating revenue from State and local governments (exclusive of any amounts received, or if not received, claimed, as reimbursement under Title XIX of the Social Security Act) or a quasi-public corporation as defined at 42 CFR 124.2(m).

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, at least 90 days prior to the beginning of the fiscal year for which certification is sought, copies of the following:

(1) The documents or laws (such as corporate charter, local ordinance, State laws) which establish its charitable purpose and operation.

(2) Audited financial statements for the most recent three years available.

(3) Billing and charging policies of the facility, including procedures for providing charity care.

(d) *Period of Effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may withdraw a certification under this subpart when he determines that there has been a material change in the factors upon which certification was based or a material failure to comply with the applicable requirements of this subpart.

(2) Except as required by § 124.511(b)(2), where a facility certified under this section has prior to that certification incurred a deficit under § 124.503, it may make up that deficit under this section on the basis of one year of certification for each year of deficit. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

[FR Doc. 85-20787 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-17-M

Notices

Federal Register

Vol. 50, No. 173

Friday, September 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985 Crop Soybean Final Loan and Purchase Rate

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1985 Crop Soybean Final Level of Price Support.

SUMMARY: The purpose of this notice is to announce that the final level of price support for the 1985 soybean crop is \$5.02 per bushel. This determination is required to be made by section 201(g)(1) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447-4417. Since this determination is calculated in accordance with the statutory formula, the requirement of an Impact Analysis has been waived.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice

applies to are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(g)(1) of the Agricultural Act of 1949, as amended, provides that the price of soybeans for each of the 1982 through 1985 marketing years shall be supported through loans and purchases at a level equal to 75 percent of the simple average price received by farmers for soybeans for each of the preceding five marketing years, excluding the high and low valued years, except that the support price may not be less than \$5.02 per bushel. However, if the Secretary of Agriculture determines that the average price received by producers for soybeans in any marketing year is not more than 105 percent of the level of loans and purchases for such marketing year, the support level may be reduced for the next marketing year by the amount which is determined to be necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 10 percent in any year nor below \$4.50 per bushel.

Section 201(g)(1) also provides that the Secretary must make a preliminary announcement of the level of price support not earlier than 30 days prior to September 1, the beginning of the marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years preceding the beginning of the marketing year for which the level of support is determined. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement applies. The final level of support cannot be less than that of the preliminary announcement.

A preliminary level of price support of \$5.02 per bushel for the 1985 crop of soybeans was determined and announced on August 22, 1985 (50 FR 33987). As set forth below, it has been

determined that the final level of price support for the 1985 crop of soybeans is \$5.02 per bushel.

Determination

The simple average price received by farmers for soybeans for each of the preceding five years, excluding the high and low valued years, is \$6.46 per bushel. This determination is based on the following data:

(1)

SIMPLE-AVERAGE SOYBEAN PRICES (DOLLARS PER BUSHEL)

1980	7.50
1981	6.05
1982	5.83
1983	7.67
1984	5.80 (projected)

(2) Average of the five years, excluding the low valued year (1984) and the high valued year (1983): $(\$7.50 + \$6.05 + \$5.83)/3 = \$6.46$ per bushel.

(3) The final price support level calculation is $\$6.46 \times .75 = \$4.85$. The calculated final price support level of \$4.85 per bushel is less than the statutory minimum level of \$5.02 per bushel. The projected average price of soybeans received by producers during the marketing year 1984 (\$5.85) exceeded 105 percent of the 1984 price support level for soybeans $(\$5.02 \times 1.05 = \$5.27)$. There is, therefore, no basis for reducing the final price support level for soybeans below the statutory minimum level of \$5.02 per bushel. Accordingly, the final 1985-crop soybean price support level is \$5.02 per bushel.

(Sec. 201(g)(1) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446 (g)(1)).

Signed at Washington, D.C., on August 28, 1985.

John R. Norton III,

Acting Secretary.

[FR Doc. 85-21267 Filed 9-3-85; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Challis National Forest Grazing Advisory Board; Meeting

The Challis National Forest Advisory Board will meet at 1:00 p.m., MST, on November 6, 1985 at the Lost River

Ranger District Office, Mackay, Idaho. The purpose of this meeting is to discuss, and receive advice and recommendations for, the utilization of range betterment funds, and development of allotment management plans for Fiscal Years 1986 and 1987.

The meeting will be open to the public. Persons who wish to attend should notify Ralph Jenkins at the Challis National Forest Supervisor's Office, Challis, Idaho (208/879-2285). Written statements may be filed with the committee before or after the meeting.

Dated: August 29, 1985.

Jack C. Griswold,

Forest Supervisor.

[FR Doc. 85-21331 Filed 9-5-85; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

South Mississippi Electric Power Association, Hattiesburg, MS; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Public Law 93-32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of \$63,400,000 to South Mississippi Electric Power Association, (SMEPA), Hattiesburg, Mississippi. This loan guarantee will provide funds needed to complete funding for SMEPA's ten percent ownership interest in the Grand Gulf Nuclear Unit No. 1 constructed by Middle South Energy.

FOR FURTHER INFORMATION CONTACT: Mr. Henry L. Thomas, General Manager, South Mississippi Electric Power Association, P.O. 1589, Hattiesburg, Mississippi 39401.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Thomas at the address given above.

In order to be considered, proposals must be submitted on or before October

7, 1985 to Mr. Thomas. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as SMEPA and REA may deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

[This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.]

Dated: August 30, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-21282 Filed 9-5-85; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Madison-Cypress Creek Watershed, TN; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Madison-Cypress Creek Watershed, Madison County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, telephone (615) 251-5873.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald C. Bivens, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of

improvement include accelerated technical and financial assistance for land treatment on 4,540 acres of upland cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald C. Bivens.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

[This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.]

Billy K. Benson,

Deputy State Conservationist.

August 29, 1985.

[FR Doc. 85-21360 Filed 9-5-85; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 AM to 1:00 PM, on Wednesday, September 11, 1985, to take place in the Hubert Humphrey Building, Conference Room 723A, 200 Independence Avenue, SW., Washington, D.C.

Items on the agenda: Revisions to Authorities and Delegations; release and/or publication of the Signage Report and the Detectable Tactile Surface Treatment Report prepared by Georgia Tech; Board action on ANSI A117.1 ballot on the next edition of "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People;" report on Recreation Working Group/Technical Paper; staff recommendations on McGraw-Hill's *Time-Saver Standards for Landscape Architecture*;

Board comments and/or recommendations concerning existing and recommended Board publications; overview presentation by the Acting Director of Research on how current and proposed research relates to sections of the MGRAD and UFAS.

DATE: Wednesday, September 11, 1985—10:00 AM-1:00 PM.

ADDRESS: Department of Health and Human Services Hubert Humphrey Building, Conference Room 723A, 200 Independence Avenue, SW., Washington, D.C.

All other committees of the ATBCB will meet on Monday and Tuesday, September 9 and 10, in the Hubert Humphrey Building, Room 723A, 200 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245-1591 (voice of TDD).

Robert M. Johnson,
Executive Director.

[FR Doc. 85-21279 Filed 9-5-85; 8:45 am]

BILLING CODE 8820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-021]

Certain Carbon Steel Products From Brazil; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On June 19, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering all of the comments received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all certain carbon steel products

entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2788.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1985, the Department of Commerce ("the Department") published in the *Federal Register* (50 FR 25437) the preliminary results of its changed circumstances administrative review of the countervailing duty order on certain carbon steel products from Brazil (49 FR 25655, June 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian hot-rolled carbon steel plate in coil, hot-rolled carbon steel sheet, and cold-rolled carbon steel sheet. Such merchandise is currently classifiable under items 607.6610, 607.6710, 607.6720, 607.6730, 607.6740, 607.8320, 607.8342, 607.8350, 607.8355, and 607.8360 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received written comments from COSIPA, USIMINAS, and CSN ("the respondents"), from Hansa-World Cargo Service, Inc., an importer, and from the United States Steel Corporation, the petitioner.

Comment 1

The respondents contend that interest should be paid on the cash deposits of estimated countervailing duties refunded as a result of the revocation of the order.

Department's Position

We agree. We will instruct the Customs Service to refund with interest all cash deposits made on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Comment 2

The respondents contend that this notice should state the date by which an administrative review must be requested for entries made prior to October 1, 1984.

Department's Position

The Department published on August 13, 1985 (50 FR 32556), an interim-final/final rule itemizing when interested parties may request reviews.

Comment 3

Hansa argues that the revocation should be effective February 10, 1984, the publication date of the preliminary affirmative countervailing duty determination (49 FR 5157) and the date on which liquidation was suspended, not October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that "... all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position

The Arrangement contains no provisions requiring that revocation cover all suspended entries.

Comment 4

U.S. Steel contends that the revocation of the countervailing duty order should apply only to the merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Using an earlier date for revocation would violate the intent of the Arrangement. Further, U.S. Steel argues that the Department has no statutory authority to revoke using an earlier date because no one has shown good cause to conduct a section 751(b) review of that period at this time. The sole good cause basis for any section 751(b) review now is the affirmative statements of the domestic interested parties. Finally, U.S. Steel notes that its withdrawal of the petition and request for revocation of the countervailing duty order "were conditioned upon an October 1, 1984 revocation."

Department's Position

We agree and are revoking the order for entries, or withdrawals from warehouse, for consumption on or after October 1, 1984.

Final Results of the Review and Revocation

After review of the comments received, we determine that the domestic interested parties are no longer

interested in continuation of the countervailing duty order on certain carbon steel products from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain carbon steel products from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain carbon steel products from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 29, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-21312 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Pueblo Zoological Society

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name, Pueblo Zoological Society (P369), Pueblo Zoo.

b. Address, P.O. Box 1245, Pueblo Colorado 81002.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Cuvier's beaked whale (*Ziphius cavirostris*) 3 vertebrae.

4. Type of Take: To import from Bermuda cetebrae taken from a 1981 beached whale.

5. Location of Activity:

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: August 30, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-21269 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

FY 1986 Price Change Notification

This is to advise National Technical Information Service (NTIS) customers of planned price increases for FY 1986. Effective October 1, 1985, prices for paper copy and microfiche reports, the GRA&I Annual Index, Software and Data Files as well as certain subscription/standing order products will increase. Prices for Abstract Newsletters, Tech Notes, SRIM, Published Searches, GRA&I Journal, and other subscription/standing order items will not increase until January 1, 1986.

Inquiries regarding this price notification, or prices changes for other agency subscription and standing order products should be directed to Dr. Melvin J. Josephs, Associate Director, Office of Program and Product Management, NTIS, Springfield, VA, 22161, (703) 487-4674.

The following list details the price changes and the effective dates. North American prices are for customers in the United States, Canada and Mexico. Foreign prices are for all other customers.

PRICES EFFECTIVE OCTOBER 1, 1985

Price codes	North American price	Foreign price
Standard price schedule "A"		
Microfiche:		
A01	\$5.95	\$11.90
Paper Copy:		
A02 and A03	9.95	19.90
A04 and A05	11.95	23.90
A06 through A09 (inclusive)	16.95	33.90
A10 through A13 (inclusive)	22.95	45.90
A14 through A17 (inclusive)	28.95	57.90
A18 through A21 (inclusive)	34.95	69.90
A22 through A25 (inclusive)	40.95	81.90
A99—Contact NTIS for price quote		

Computer Products Software and Data Files "T" Code Price Schedule

T01	\$145.00	\$290.00
T02	160.00	320.00
T03	275.00	550.00
T04	370.00	740.00
T05	460.00	920.00
T06	535.00	1,070.00
T07	610.00	1,220.00
T08	685.00	1,370.00
T09	760.00	1,520.00
T10	835.00	1,670.00
T11	910.00	1,820.00
T12	965.00	1,970.00
T13	1,060.00	2,120.00
T14	1,135.00	2,270.00
T15	1,210.00	2,420.00
T16	1,285.00	2,570.00
T17	1,360.00	2,720.00
T18	1,435.00	2,870.00
T19	1,510.00	3,020.00
T99—Contact NTIS for price quote		

Documents and Microfiche "E" Code Price Schedule

E01	\$7.50	\$15.00
E02	10.00	20.00
E03	11.00	22.00
E04	13.50	27.00
E05	15.50	31.00
E06	18.00	36.00
E07	20.50	41.00
E08	23.00	46.00
E09	25.50	51.00
E10	28.00	56.00
E11	30.50	61.00
E12	33.00	66.00
E13	35.50	71.00
E14	38.00	76.00
E15	42.00	84.00
E16	46.00	92.00
E17	50.00	100.00
E18	54.00	108.00
E19	60.00	120.00
E20	70.00	140.00

PRICES EFFECTIVE OCTOBER 1, 1985—
Continued

Price codes	North American price	Foreign price
E99—Contact NTIS for price quote		

1984 GRA&I ANNUAL INDEX

North American price	Foreign price
\$479	\$645

PRICES EFFECTIVE JANUARY 1, 1986

ABSTRACT NEWSLETTERS

[Prices shown are annual]

Category	North American price	Foreign price
Administration & Management	589	1125
Agriculture & Food	89	125
Behavior & Society	79	115
Biomedical Techn. & Human Factors		
Engrg.	79	115
Building Industry Technology	79	115
Business and Economics	79	115
Chemistry	89	125
Civil Engineering	89	125
Communication	79	115
Computers, Control & Info. Theory	109	155
Electrotechnology	79	125
Energy	109	155
Environmental Pollution & Control	109	155
Foreign Technology	109	155
Govt. Inventions for Licensing	205	310
Health Planning & Health Serv.		
Rsch.	89	125
Library & Information Serv.	79	115
Manufacturing Technology	125	175
Materials Sciences	89	125
Medicine & Biology	89	125
NASA Earth Resources Survey Program	79	115
Natural Resources & Earth Sciences	89	125
Ocean Technology & Engineering	79	115
Physics	79	115
Problem Solving Info. for State & Local Govts.	79	115
Transportation	89	125
Urban & Regional Techn. & Dev.	79	115

NTIS TECH NOTES

[Prices shown are annual]

Number of categories	North American price	Foreign price
1	568	1136
2	127	254
3	178	356
4	224	448
5	264	528
6 or more	287	574

GOVERNMENT REPORTS ANNOUNCEMENT AND
INDEX—JOURNAL (GRA&I)

[Prices shown are annual]

North American price	Foreign price
\$379	\$530

SELECTED RESEARCH IN MICROFICHE
(SRIM)

	North American per report	Foreign per report
SRIM without Index	\$1.25	\$2.50
SRIM with Microfiche Index	1.35	2.70
SRIM with Paper Copy Index	1.55	3.10

North American per copy	Foreign per copy
Published Searches (Price Code NO 1)	
\$45	\$80
Directory of Computerized Data Files (Price Code NO 2)	
\$48	\$80
Directory of Computer Software (Price Code NO 2)	
\$48	\$80

Nancy L. Moore,

Budget Analyst, Office of Budget.

[FR Doc. 85-21369 Filed 9-4-85; 11:40 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE
IMPLEMENTATION OF TEXTILE
AGREEMENTS

Announcing Import Restraint Limits
for Certain Cotton Textile Products
Produced or Manufactured in Turkey

August 30, 1985.

On June 17, 1985 a notice was published in the *Federal Register* (50 FR 25116) announcing that, on May 30, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of women's, girls', and infants' cotton coats in Category 335 and men's and boys' cotton shirts in Category 340, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached in consultations on a mutually satisfactory solution concerning these categories, the United States Government has decided to control imports in Categories 335 and 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986 at levels of 37,322 dozen and 134,629 dozen, respectively. Should future consultations result in agreement on different levels, further notice will be published in the *Federal Register*.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the

United States of consumption, or withdrawal from warehouse for consumption, of cotton textile products in Categories 335 and 340 exported during the period which began on May 30, 1985 and extends through May 29, 1986, in excess of the designated restraint limits.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Ann Fields International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377/4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 30, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 6, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 335 and 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extends through May 29, 1986, in excess of the following levels:

Category	12 month restraint level ¹
335	37,322 dozen.
340	134,629 dozen.

¹ The levels have not been adjusted to reflect any imports exported after May 29, 1985.

Textile products in Categories 335 and 340 which have been exported to the United States prior to May 30, 1985 shall not be subject to this directive.

Textile products in Categories 335 and 340 which have been released from the custody of the U.S. Customs Service under the

provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21313 Filed 9-5-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 6, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 7, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 24018) of proposed addition to Procurement List 1985, October 19, 1984 (49 FR 41195).

Addition

After consideration of the relevant

matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.8.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985:

Janitorial/Custodial, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-21311 Filed 9-5-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposal To Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Citrus Associates of the New York Cotton Exchange, Inc. for trading commodity options on frozen concentrated orange juice futures contracts.

SUMMARY: The Citrus Associates of the New York Cotton Exchange, Inc. ("CA/NYCE") has submitted an application to trade options on frozen concentrated orange juice ("FCOJ") futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 7, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Reference should be made to the CA/NYCE FCOJ option contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for option trading (46 FR 54500 (November 3, 1981)).¹ Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 33641 (August 24, 1984)). Further, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to these five permissible option designations (49 FR 2752 (January 23, 1984)). The New York Cotton Exchange has been designated as a contract market in options on cotton futures contracts.

CA/NYCE has applied for contract market designation, pursuant to Section 4(c) of the Commodity Exchange Act, 7 U.S.C. 6(c) (1982) ("Act"), and Commission Regulation § 33.5, to trade options on frozen concentrated orange juice futures contracts.

A copy of the terms and conditions of the proposed CA/NYCE option on FCOJ futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CA/NYCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C.

¹The commodities which are eligible for the initial pilot program are commodities which are not enumerated in Section 2(a)(1)(A) of the Commodity Exchange Act. The enumerated commodities are generally agricultural products which are produced in this country. Frozen concentrated orange juice is an enumerated commodity.

552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by CA/NYCE in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20561, by October 7, 1985.

Issued in Washington, D.C., on August 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-21238 Filed 9-5-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Finding of No Significant Impact (FONSI); Ground Wave Emergency Network (GWEN)

Description of Proposed Action and Alternatives

The Ground Wave Emergency Network is an emergency communications system which will be deployed within the Continental U.S. (CONUS) to enhance the survivability and control of U.S. strategic forces. The system consists of: Relay Terminals, Receive Only Terminals, and Input/Output Terminals. The program will be acquired in three separate stages identified as: Initial Connectivity Capability (FOC).

Each site will consist of a 300-foot-high antenna with guy wires plus a buried ground plane antenna of radial wires, a fenced-in area containing an enclosure for appropriate communication equipment, and a power generator with fuel storage.

This system will be comprised of a large network of radio receive and radio transmit stations (approximately 400) that relay messages throughout CONUS. If some nodes have been destroyed, messages will be routed around the inoperative nodes and still reach the intended destination.

It is necessary that any candidate communication system for this application survive the effects of electromagnetic pulse. This requirement rules out the use of assets such as the commercial telephone systems and other communication techniques that are adversely affected by a disturbed atmosphere. Only line-of-sight systems and ground wave communication systems remain as possible alternatives. The use of microwave systems for line-of-sight relay terminals would require in excess of 10,000 installations. The large number of relay terminals rule out this alternative because of environmental impacts, costs and construction schedules. The no action alternative would deprive U.S. strategic forces of communications capability as existing systems cannot fully perform the functions required of GWEN.

Anticipated Environmental Effects

Construction noise and diesel generator noise is expected but will be moderate. Air quality during construction grading and power generator operation will be affected slightly.

Since some of the sites are unmanned and others are minimally manned, there will be insignificant impact on solid waste and water quality. The appropriate fuel storage and spill prevention measures in accordance with all applicable local, state or Federal requirements will be implemented to assure that no water contamination occurs.

The radio frequency radiation field levels outside the exclusion fence are well below hazardous levels and pose no hazard to people. In addition, radiological hazard teams will conduct measurements to verify levels of radiation and will post warning signs to restricted access areas.

No socio-economic impact is anticipated due to operation of the unmanned relay sites and a minimal impact in the form of a requirement for a few new operation, support and maintenance personnel is anticipated at some of the other sites.

Conclusion

As a result of the insignificant anticipated impacts in all environmental factors, a Finding of No Significant Impact (FONSI) is made for the GWEN system. An Environmental Assessment, dated April 1985, which analyzes the proposed project is on file at: Electronic

Systems Division/DEP, Attn: Mr. Al Scansaroli, Hanscom AFB, MA 01731.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-21329 Filed 9-5-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent to Prepare a Draft Environmental Impact Statement Supplement (DEIS) for the Yakima-Union Gap Flood Damage Reduction Project, Washington

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS for the Yakima-Union Gap Flood Damage Reduction Project.

SUMMARY: 1. *Proposed Action.* The project area is comprised of portions of the cities of Yakima and Union Gap, and unincorporated sections of Yakima County in eastern Washington. A Feasibility Report and EIS were completed for this project in 1976, and the final EIS was filed with the Council on Environmental Quality on 14 May 1981. The Feasibility Report recommended that 9 miles of existing levees between the confluence of the Naches and Yakima Rivers and the Highway 24 (Moxee) Bridge be improved, and that 2.7 miles of left bank levee and 1.1 miles of right bank levee be constructed downstream of the Moxee Bridge to protect primarily farmland, residences, and the Yakima Sewage Treatment Plant. The purpose of the present investigation is to reaffirm the engineering, social, environmental, and economic viability of the plan proposed during feasibility investigations and continue engineering planning which will provide a basis for construction. This phase of Corps of Engineers study is called Continued Planning and Engineering (CP&E). In addition, the DEIS supplement will address subjects not discussed in detail in the original EIS, particularly, habitat preservation, growth impacts, and cultural resources.

2. *Alternatives.* Viable alternatives to a levee project have not been identified. However, opportunities to minimize social and environmental project impacts will be investigated. Detailed design studies will be conducted to determine if the levee alignment and design can be altered to avoid impacts to riparian vegetation, fish and wildlife habitat, and existing recreational facilities on or adjacent to the levees.

3. Scoping Process.

a. *Public Involvement Program.* Two scoping meetings have taken place (27 March 1985 and 29 July 1985) involving nine agencies and groups. Additional public involvement will be scheduled throughout CP&E.

b. *Significant Concerns.* Several study concerns surfaced during the feasibility study and the initial scoping, and will continue to be addressed during CP&E. Some of the most important concerns are the following:

- (1) Develop a project design that will avoid or minimize impacts to riparian vegetation, and fish and wildlife habitat.
- (2) Develop a landscaping plan for the levee segment that will replace the existing buffer vegetation in Sportsman Park.
- (3) Examine levee designs or a cost-sharing plan that could help to retain or replace existing bike paths on the levees.
- (4) Perform a cultural resources reconnaissance that will identify historic and prehistoric resources within the project area and prescribe necessary salvage or mitigation measures.
- (5) Evaluate the impacts of constructing levees downstream of the Moxee Bridge on water quality and development in the area.

c. *Environmental Review and Consultation Requirements.* This project investigation is being coordinated with the U.S. Fish and Wildlife Service and will satisfy requirements of the Fish and Wildlife Coordination Act and section 7(c) of the Endangered Species Act. Section 404 of Public Law 92-500 requires an evaluation of the effects of activities on aquatic ecosystems involving the discharge of dredged or filled material in waters of the United States. A section 404(b) evaluation which discusses the project impacts on the aquatic ecosystem will be developed.

4. *Availability of DEIS Supplement.* The DEIS supplement is presently scheduled to become available to the public in August 1986.

ADDRESS: Additional information about the proposed action and DEIS supplement can be obtained by contacting the environmental coordinator: Mr. Michael Scuderi, Environmental Resources Section, Seattle District, Corps of Engineers, Post Office Box C-3755, Seattle, Washington 98124, Telephone (206) 764-3624/(FTS 399-3624).

Dated: August 30, 1985.

Roger F. Yankoupe,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-21333 Filed 9-5-85; 8:45 am]

BILLING CODE 3710-ER-M

Intent for an EIR/EIS for a Regulatory Permit To Excavate a Connection to the Sacramento River, Adjacent to the City of Sacramento, CA

AGENCY: Sacramento District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare an EIS/EIR.

SUMMARY: The proposed inland marina will be the centerpiece for a large residential commercial waterside development along the Sacramento River. The proposed project involves developing a 300 acre site. The applicant intends to construct an inland marina by excavating about 1.2 million cubic yards of material. The excavated material will be placed in a floodway to provide fill for residential and commercial sites. The fill will also raise the sites above the flood plain elevation of 32 feet.

About 800 residential units, a 600 room hotel, a convention center, 125,000 square feet of retail commercial buildings and 450,000 square feet of office business buildings will be constructed on the upland area, including the area within the floodway of the Sacramento River.

At present, the site is undeveloped and heavily vegetated with a variety of plants. Much of the development will be done on the riverward side of the levee that protects the community of Broderick from floods from the Sacramento River. The area to be developed has been designated open space by the East Yolo County General Plan. The remainder of the site has been designated low to middle density. The project is within the boundaries of a proposed redevelopment area.

Alternatives:

The following alternatives are being considered:

1. Reduced scope of project.
2. Change in siting of redevelopment features including only construction of the marina in the flood plain; all housing moved out of the floodway.

Other alternatives identified during the scoping process will be considered. Significant issues that have been identified to date that will be discussed in the EIS/EIR:

1. Ecological resources.
2. Hydrology and water quality.
3. Change in hydraulic characteristics of the river and project effect on the floodway.
4. Social and economic impacts.
5. Impacts on wildlife habitat and endangered species.

Other issues identified during the scoping will be discussed in the EIS. A public notice describing the project will

be sent to all known interested parties requesting comments on the project and on the scope of the EIS/EIR.

Scoping Process

Other environmental review and consultation requirements which will be conducted concurrently with the NEPA process includes Section 401 and 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Endangered Species Act, and Executive Order 11988 on Flood Plain Management.

We estimate the draft EIS/EIR will be available to the public on January 1986. The Environmental Impact Statement will be prepared by the EDAW, Inc. Questions concerning the proposed actions and EIS/EIR should be directed to Tom Coe, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814 (916) 551-2270, FTS 460-2270.

Wayne J. Scholl,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-21330 Filed 9-5-85; 8:45 am]

BILLING CODE 3710-ER-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee Technology Base Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Base Task Force will meet September 23-24, 1985, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: August 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,
Federal Register Liaison Officer.

[FR Doc. 85-21315 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE-M

Intent To Prepare a Draft Joint Environmental Impact Statement for a Land Exchange and Energy Recovery Project, Naval Air Station, Miramar, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality Regulations (40 CFR Part 1506.6), the Department of the Navy and California Energy Commission (CEC) will prepare a joint environmental impact statement for a proposed land exchange with the City of San Diego and a waste-to-energy project.

Land located on the south edge of Miramar Naval Air Station, west of Highway 163 and east of Convoy Street, will be traded to the City in exchange for land now owned by the City. The land, when acquired by the City will be leased to a private company for construction and operation of a 62 megawatt, 2250 ton per day waste-to-energy facility for disposal of municipal solid waste. Possible alternatives to the proposed actions include but are not limited to: no land exchange, sale of the land, or exchange of the land to some other party for other uses.

Affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested parties are invited to submit written comments regarding the scope and significant issues to be analyzed in the environmental impact statement; or any other matter relevant to the scoping process for the affected environment. Comments should be submitted as early as possible but no later than 15 October 1985.

Questions or comments regarding scoping or the environmental impact statement should be addressed to:

- a. For the proposed land exchange:
Dana Sakamoto, Western Division,
Naval Facilities Engineering
Command, P.O. Box 727, Code 203,
San Bruno, CA 94066.
- b. For the waste-to-energy project:
Christopher Tooker, California Energy

Commission, Siting and
Environmental Division, 1516 19th
Street, Sacramento, CA 95814.

Dated: August 30, 1985.

W.F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,
Federal Register Liaison Officer.

[FR Doc. 85-21314 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE-M

National Environmental Policy Act; Record of Decision To Homeport a Carrier Battle Group (CVBG) in the Puget Sound Region (Everett), WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to construct, homeport and operate a Carrier Battle Group (CVBG) in the Puget Sound region and specifically to be located at Everett, Washington.

Everett is to be the homeport for up to fifteen ships to include a nuclear powered Aircraft Carrier (CVN), three Guided Missile Cruisers (CG) (two of which are to be nuclear powered), two Destroyers (DD), two Guided Missile Destroyers (DDG), four Guided Missile Frigates (FFG) and two Mine Countermeasures ships (MCM). The homeport will involve some 8200 military personnel and about 8750 civilians including an estimated 7600 military dependents.

Four of the ships would be Naval Reserve Forces (NRF) ships and would operate independently of the main Battle Group, which would consist of the Carrier and ten combatants. One additional ship, a Destroyer Tender (AD) would spend one month per quarter at the homeport. Two Fast Combat Support Ships (AOE's) which are homeported currently at the Puget Sound Naval Shipyard (PSNS) in Bremerton would participate in some Battle Group activities but would remain homeported at PSNS. Several small service craft (10 to 15), such as tug boats, fuel boats, barges, and pusher boats, would also be included at the homeport. Location of a homeport facility at the 116 acre Norton Avenue Terminal site in Everett will require construction of a wide range of support facilities. The facilities to be constructed would include berthing for up to 15 ships plus yard craft, waterfront support facilities, administrative facilities, Bachelor Enlisted Quarters (BEQ), recreational facilities, and a Shore Intermediate Maintenance Activity (SIMA).

Construction at the homeport site would focus on demolition of virtually all existing buildings currently on-site (except the chill facility) and construction of new buildings, utilities, parking areas and recreational facilities. The large 'L' shaped pier at the south end of the existing facility would be reconstructed and three smaller existing piers would be removed. Approximately 10 acres of existing fill (about 1 million cubic yards of material) at the south end of the main pier would also be removed. A new pier and 1600-foot breakwater would be constructed. Construction of the ship berthing facilities in the East Waterway would necessitate the removal of approximately 2.5 million cubic yards of bottom materials. Dredging operations would be done with both a hydraulic dredge and clamshell for clean materials and with a clamshell in the case of contaminated material.

The Navy filed a Draft Environmental Impact Statement (DEIS) for the proposed action on 16 November 1984. A public hearing was held subsequently in Everett on 14 December 1984. At the hearing concerns raised and addressed in the DEIS were the impact of the homeport siting to the surrounding ecology of the area, traffic and congestion in Everett resulting from the Navy's presence, potential toxicity and disposal of dredged materials, the fiscal impacts of the homeport versus economic benefits, air pollution, impacts on local counties, and impacts of the homeporting action on the Tulalip Tribes of Washington. The Final Environmental Impact Statement (FEIS) was filed with the public on 21 June 1985.

In selecting a site for the regional homeporting, the Navy examined both existing Navy facilities and non-Navy sites in the northwestern United States. Of these alternatives the Norton Avenue Terminal in Everett and terminal 91 in Seattle, Washington were evaluated in detail in the environmental documentation prepared along with a no-action alternative. Based on multiple impact factors which included population, housing, aquatic ecology, terrestrial ecology, land use, community facilities, transportation, available energy, air quality, aesthetics, economic considerations and others, the Norton Avenue Terminal Site in Everett, Washington was selected. The no-action alternative was defined as leaving the carrier at an existing west coast port and leaving other CVBG vessels at current homeport locations, thereby depriving their use as a coordinated force.

Constructing the homeport at Everett would require the East Waterway to be dredged to depth requirements of the homeported Navy ships. About 800,000 cubic yards of contaminated sediments would need to be dredged and disposed. This was considered by most reviewers as the most significant environmental issue.

The procedures for identifying an acceptable disposal option has involved a number of field studies, evaluations of dredging and disposal technologies and strategies, and close coordination with Federal and State regulatory agencies. The Navy's proposal is to use confined aquatic disposal of the dredged material. This technique would place contaminated bottom sediments in a Deep Delta site located approximately 1½ miles southwest of the East Waterway in deep water covered by a blanket of clean capping material. This will isolate contaminants from the marine environment.

Dredging activities would also likely result in short-term impacts at the dredge site such as localized water quality degradation, temporary disruption of the benthic invertebrate community, and loss of food sources for juvenile salmon and demersal fish. Disposal of the dredged materials at an open water site would result in temporary impacts there. Disposal of dredged materials will occur at a site approved under the Corps of Engineers Section 404 Permit Process. Additional information, if required, as well as further identification of dredging technologies will be supplemented by the Corps of Engineers as a part of the Section 404 permit process.

Operation of the homeport could result in degradation of surface water quality due to discharge of graywater, ship maintenance materials, oil spills during refueling, and surface runoff from ships and on-shore facilities. A major uncontrolled oil or fuel spill, should one inadvertently occur, would have major impacts on wetland areas and on associated aquatic, marine wildlife and waterbird species. All of these assumed impacts have corresponding mitigation measures to obviate or lessen the impacts should they occur.

Construction and operation of the proposed homeport has the potential to affect air quality levels in the immediate area. Questions were raised as to the degree of impact and the data and methodology used by the Navy. Navy will review/reevaluate its position for construction prior to completion of the Section 404 permit application process and will comply with applicable Prevention of Significant Deterioration (PSD) regulations.

Operation would result in potential habitat losses and/or disturbances of shorebirds, waterfowl, and marine mammals.

Puget Sound Indian Tribes could lose fishing time and gear in their usual and accustomed fishing areas as a result of homeport operation. There could also be a loss of fishing area due to security requirements imposed around the homeport facility. The Navy is presently negotiating with the Tulalip Indian representatives to identify specific measures to mitigate actual or perceived impacts on the fishery. A satisfactory resolution to these issues is expected prior to the homeport becoming operational.

Operation of a homeport at Everett would significantly increase the rate of population growth in Snohomish County. By 1992, the project is expected to have caused a population increase of 27,000 persons which is a six percent increase over the projected population growth. Although an estimated 4320 military personnel are expected to reside on ships or in bachelor enlisted quarters at the homeport, there would be a substantial increase in demand for housing between 1989 and 1992. Approximately 8600 new housing units would be required for military and civilian homeport-related personnel. This could result in temporary housing shortages, increases in housing costs, and displacement of some low income families.

As a result of project-related population growth, the overall demand for local health and social services would increase. There would also be moderate impacts on public law enforcement agencies.

Certain utilities would experience significant impacts due to homeport operations. There would be a measureable impact on the Everett waste water collection system and on systems normally utilized for the collection and disposal of solid waste.

Existing traffic loads and patterns will be impacted, background noise will be increased and the visual character of the area will change. Mitigating measures noted are possible to offset some of the impacts identified.

Everett was selected as the site offering the best combination of overall operational characteristics. Berthing is satisfactorily accommodated, with immediate access to an approach channel with adequate maneuvering space. Marine services are available as well as access to other goods and supplies. Land is available for construction of most of the required shoreside facilities and personnel services can be accommodated. From a

strictly environmental standpoint the homeporting action is considered to cause no more of an overall impact than the alternative considered.

The Navy believes that there are no outstanding issues to be addressed with respect to this project. Some mitigation measures require continued coordination between the Navy and cognizant State and local agencies and individual representatives to effect implementation of the homeporting action and such coordination is expected to occur.

Dated: August 27, 1985.

L. Wayne Army, III,
Principal Deputy Assistant Secretary of the
Navy (Shipbuilding and Logistics).

[FR Doc. 85-21316 Filed 9-5-85; 8:45 am]

BILLING CODE 3810-AE

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Evan C. Vlachos, Chairman, EAB, and Lieutenant General E.R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, September 24, 1985, to 11:00 a.m., Thursday, September 26, 1985. Place: The meeting will be held at the Marines Memorial Club, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

24 September—Tuesday—A.M. Session

8:00—Meeting convened—Opening remarks
8:25—Meeting objectives and charge to EAB—Chief of Engineers.
9:00—Introduction and comments—Director of Civil Works
9:45—Old business

P.M. Session

1:00—Shoreline protection and public access

1:30—Zoning
2:00—Development needs
2:45—Legal aspects
3:15—Panel discussion
4:45—Meeting recess

25 September—Wednesday—A.M. Session

8:00—Historical changes in Bay Habitat
8:40—Mitigation of Habitat loss
9:20—Restoration of Habitat
10:15—Management of wetlands
10:45—Panel discussion

P.M. Session

1:00—Environmental compliance monitoring
2:45—Environmental auditing
3:15—Panel discussion

26 September—Thursday—A.M. Session

8:00—EAB Report to the Chief of Engineers
10:00—Chief of Engineers response
10:30—Public comments
11:00—Meeting adjourned
John O. Roach, II,
Army Liaison Officer with the Federal
Register.

[FR Doc. 85-21273 Filed 9-5-85; 8:45 am]
BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

**Office of Assistant Secretary for
International Affairs and Energy
Emergencies**

**Atomic Energy Agreements; Proposed
Subsequent Arrangement; Austria and
European Atomic Energy Community**

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/AT(EU)-64, for the retransfer of 11 test fuel elements from the Federal Republic of Germany to Austria for use in the Astra research reactor in Seibersdorf, Austria in connection with the Reduced Enrichment Research and Test Reactor (RERTR) program. This program is intended to reduce the use of highly enriched uranium in such reactors. The fuel elements contain 21 kilograms of uranium, enriched to 19.95% in U-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended,

it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.

*Acting Assistant Secretary for International
Affairs and Energy Emergencies.*

[FR Doc. 85-21264 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

**Atomic Energy Agreements; Proposed
Subsequent Arrangement; Taiwan and
European Atomic Energy Community**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" as authorized by the Taiwan Relations Act of 1979 (Pub. L. 96-8), and under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned authority and agreement involves approval of the following retransfer:

RTD/EU (CI)-1, for the retransfer of uranium dioxide pellets containing 380 grams of uranium, enriched to 7.1% in U-235, from Taiwan to France, for irradiation testing in the OSIRIS reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985

George J. Bradley, Jr.

*Acting Assistant Secretary for International
Affairs and Energy Emergencies.*

[FR Doc. 85-21263 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

**Atomic Energy Agreements; Proposed
Subsequent Arrangement; European
Atomic Energy Community**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a

proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-856, to AGIP S.P.A., Italy, 148.8 grams of normal uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.

*Acting Assistant Secretary for International
Affairs and Energy Emergencies.*

[FR Doc. 85-21274 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

**Atomic Energy Agreements; Proposed
Subsequent Arrangement; European
Atomic Energy Community**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-849, to the Institute fuer Strahlenschutz, Nuremberg, the Federal Republic of Germany, one microgram of thorium-229, for use as a tracer for determination of thorium-228 in environmental samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21277 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-857, to the Central Bureau for Nuclear Measurements, Geel, Belgium, 0.009 grams of uranium, enriched to 33% in U-235, and 0.003 grams of uranium-233, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21278 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the loan, under Contract Number WC-SD-21, of a uranium-liquid argon calorimeter, containing approximately 12.147 kilograms of uranium metal,

depleted in the isotope U-235, for use in a collaborative high-energy physics experiment. The calorimeter is to be returned to the U.S. following completion of the experiment.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21275 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-SD-125, to MB-Microtec, Inc., 1,200,000 curies of tritium gas, to be used for the manufacture of sealed tritium light sources. The U.S. Nuclear Regulatory Commission has issued license XB001234 for the export of this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-21276 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. PP-83EA]

Application for Authorization to Transmit Electric Energy to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by Fairfield Energy Venture (Fairfield) and Maine Public Service Company (MPSC) for authorization to export electric energy to a foreign country.

SUMMARY: Fairfield and MPSC have filed an application with the Economic Regulatory Administration (ERA) for authority to export to Canada electric energy, which Fairfield has agreed to sell to Central Maine Power Company (CMP) for 15 years, beginning in 1987. In order to deliver the energy to CMP, it must be transmitted through the MPSC electric system to Canada and then imported into the United States from Canada for ultimate delivery to CMP.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5935

Lise Courtney M. Howe, Office of General Counsel (GC), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2900

SUPPLEMENTARY INFORMATION:

On August 30, 1985, Fairfield Energy Venture and Maine Public Service Company jointly filed an application with ERA seeking authorization for Maine Public Service Company to export electric energy at a maximum rate of 30 megawatts (MW) from Maine to New Brunswick, Canada, from which point the energy will be imported into the U.S. for ultimate purchase by CMP of Maine.

Fairfield, located in Fairfield, Maine, has an agreement with CMP, located in central and southern Maine, to sell it 30 MW of electric power from Fairfield's planned wood-fired small power production facility, for 15 years beginning in 1987.

Fairfield is located in the service territory of MPSC. In order to deliver the electric power to CMP, it will be necessary to have the electricity transmitted through the utility systems of MPSC, the New Brunswick Electric Power Commission in New Brunswick, Canada, and Maine Electric Power Company in the State of Maine. Although the electricity will be transmitted through Canada, none of the energy will be sold there; instead, all of

the energy will be delivered to CMP for consumption in the U.S.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Fuels Programs, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed within 30 days of the publication of this notice. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue S.W., Washington, D.C. from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, D.C. on August 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-21359 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-17-NG]

Vermont Gas Systems, Inc.; Application To Increase Volumes of Natural Gas Imported From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Increase the Volumes of Natural Gas Imported from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 23, 1985, of an application from Vermont Gas Systems, Inc. (Vermont Gas) to amend its existing authorization to import up to 100,000 Mcf of additional Canadian natural gas from TransCanada Pipe Lines Limited (TransCanada) on a best-efforts, interruptible basis at a price not to exceed \$3.40 per MMBtu in accordance with Canada's Volume Related Incentive Pricing Program (VRIP) during each of the 1985-1986 and 1986-1987 contract years. Vermont Gas requests that the authorization be granted by October 30, 1985.

The application was filed with the ERA pursuant to Section 3 of the Natural

Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on October 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9622

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing, Forrestal Building, Room 6E-042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: Vermont Gas purchases its entire supply of natural gas from the general system supply of TransCanada, a Canadian corporation. Vermont Gas is totally dependent upon TransCanada for its gas supply. The delivery point is at the international boundary near Highgate Springs, Vermont. Vermont Gas sells and distributes this gas supply entirely within the state of Vermont.

Pursuant to DOE/ERA Opinion and Order No. 61 (1 ERA 70,571), Vermont Gas is currently authorized by the ERA to import up to 24,800 Mcf per day of natural gas from TransCanada on a firm basis, and an additional volume of up to 100,000 Mcf on a best-efforts, interruptible basis during the 1984-1985 contract year (from November 1, 1984, to October 31, 1985). Pursuant to DOE/ERA Opinion and Order No. 39 (1 ERA 70,544), Vermont Gas is authorized to continue importing at the 24,800 Mcf per day level during the 1985-1986 contract year (from November 1, 1985, to October 31, 1986) and to increase this to 25,600 Mcf per day during each of the next four contract years ending October 31, 1991.

With its application, Vermont Gas submitted a July 1, 1985, amendment to its February 16, 1986, gas purchase contract with TransCanada extending the sale of up to 100,000 Mcf per contract year of additional natural gas on a best-efforts, interruptible basis to the 1985-86 and 1986-87 contract years. Under its March 25, 1981, amendment to its gas purchase contract with TransCanada, Vermont Gas incurs no take-or-pay obligation until after it has taken 10 Bcf of gas in any contract year. Since the annual volume limitation imposed by the Canadian National Energy Board on TransCanada's exports to Vermont Gas in its License GL-19, as amended, is 6.5

Bcf per year on a firm basis, the take-or-pay provision will not be invoked.

The additional volumes requested will be delivered through existing facilities and Vermont Gas anticipates that purchases of interruptible gas will be made at a price not in excess of \$3.40 per MMBtu, in accordance with Canada's VRIP. The VRIP, which involves a two-tier pricing system, provides for a discount of gas purchases in excess of the base volumes computed according to a formula administered by the Canadian Minister of Energy, Mines and Resources. Pursuant to an October 17, 1983, amendment to its gas purchase contract with TransCanada, Vermont Gas' purchases during the 1983-1984 winter months (November 1983 through April 1984) were allocated between base volumes and the incentive volumes. Vermont Gas and TransCanada are considering a continuation of this allocation system as well as other pricing formulae. Vermont Gas states that, in any event, the interruptible gas will only be imported when the price is competitive.

In support of its application, Vermont Gas Stated its belief that the import of additional volumes of natural gas from Canada on a best-efforts, interruptible basis conforms to the DOE's policy guidelines because the gas will be imported only when it is competitively priced. Vermont Gas stated that the continuation of interruptible volumes from Canada is not inconsistent with the public interest as it will permit Vermont Gas to meet immediate market demands of industrial customers who would otherwise use oil, will not affect the total volume of gas which TransCanada is authorized to export to Vermont Gas, will reduce the need to import oil from countries less secure and reliable than Canada, and will not result in the incurrence of any take-or-pay obligations.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene

or notice of intervention, as applicable, and written comments. Any persons wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., October 7, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If not party requests additional procedures, a final opinion and order may be issued on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Vermont Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D. C., On August 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-21262 Filed 9-5-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL85-46-000]

EUA Power Corp.; Notice of Petition for a Declaratory Order

Issued August 30, 1985.

The filing Company submits the following:

The notice that on August 29, 1985 EUA Power Corporation ("EUA Power") filed a petition for a declaratory order making certain determinations in ratemaking and accounting in connection with the sale of power from an 11.27% ownership interest in the Seabrook nuclear generating project that EUA proposes to acquire from Bangor Hydro Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation and Maine Public Service Company. Upon approval by the Securities and Exchange Commission, EUA Power will become a subsidiary of Eastern Utilities Associates, a registered public utility holding company headquartered in Boston, Massachusetts.

EUA Power seeks two determinations. The first is a determination that it will be allowed to sell Seabrook power to non-affiliates at market-based rates. By market-based rates is meant rates negotiated between EUA Power and the buyers as just reasonable for the services provided. This determination is sought on the basis that the market for wholesale power in New England is sufficiently competitive that market-based rates qualify as just and reasonable rates within the meaning of the Federal Power Act, at least for a speculative entrant into the market having no existing customer base such as EUA Power.

The second determination consists of a series of four determinations that would apply in establishing cost-based rates for sales of power to affiliates. These determinations relate to: (1) Debt/equity ratio, (2) equity structure, (3) rates of return and (4) the effects of any subsequent findings that construction

expenditures made by the Sellers prior to EUA Power's acquisition of their shares were imprudent. The second determination would also apply to sales to non-affiliates if the Commission does not allow the market-based ratemaking requested in the first determination.

EUA Power requests expedited consideration, including waiver of initial decision, to allow a final Commission order to be issued by December 31, 1985.

Any person desiring to be heard or to protest said filing or to be apprised of any changes in the proposal in the course of the proceeding should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1985. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21259 Filed 9-5-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 9 Through August 16, 1985

During the Week of August 9 through August 16, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 9 through Aug. 16, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 12, 1985	St. Joe Petroleum Company, St. Joseph, Missouri	HEE-0160	Exception to the reporting requirements. If granted: St. Joe Petroleum Company would not be required to file certain EIA forms.
Aug. 15, 1985	Holy Cross Hospital, Mission Hills, California	HFL-0003	Request for temporary exception. If granted: Holy Cross Hospital would receive temporary exception relief from the regulations governing the Department of Energy's Schools and Hospitals Institutional Grants Program, 10 C.F.R. Part 455.
Aug. 16, 1985	Tampimex Oil International, Ltd., Washington, D.C.	HRD-0292	Motion for discovery. If granted: Discovery would be granted to Tampimex Oil International, Ltd. in connection with its Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0292).

REFUND APPLICATIONS RECEIVED

[Week of Aug. 9 to Aug. 16, 1985]

Date received	Names of refund proceeding/ name of refund applicant	Case No.
8/5/85	Altek/Adams/Johnson/Giant Industries	RF6-75
8/9/85	Arkansas Louisiana/Saunders Leasing Systems, Inc.	RF154-6
8/12/85	Aminol/County Gas Co., Inc.	RF139-66
8/12/85	Receiv Orders/Consumers Power Co.	RF171-17
8/12/85	Red Triangle/Jesse's Gulf	RF176-8
8/12/85	St. James/Glen Petroleum Corp.	RF180-16
8/12/85	Champlain/Baird's Crigo	RF187-2
8/12/85	Aminol/Behm Family Corporation	RF139-67
8/12/85	Aminol/Trio Gas, Inc.	RF139-68
8/12/85	Aminol/Rural Gas Company	RF139-69
8/12/85	Aminol/Kiamichi Country LP Gas Co.	RF139-70
8/12/85	Aminol/Linder's LP Gas Service	RF139-71
8/12/85	Armour/Kerr-McGee Corporation	RF167-4
8/12/85	Husky/Reese Tire & Center	RF161-8
8/12/85	Eugene Endicott/Ronald L. Halsey	RF186-1
8/12/85	Enterprise/Tripe Clean Petroleum Co.	RF158-2
8/12/85	Charter Company/Florida	RQ23-225
8/12/85	Perry Gas Processors/Florida	RQ183-226
8/12/85	National Helium Corp./Florida	RQ3-227
8/13/85	Armour/Caribou Four Corners	RF167-5
8/13/85	Aminol/Suwannee Valley Gas, Inc.	RF139-72
8/13/85	Aminol/Lowe's Pellets&Grain, Inc.	RF139-74
8/13/85	Aminol/Briceton Elevator, Inc.	RF139-73
8/13/85	F.O. Fletcher/Bestfire Oil Co.	RF172-1
8/13/85	Husky/Rebyan, Inc.	RF161-7
8/14/85	Husky/W.S. Hatch Company	RF161-9
8/14/85	St. James/Quincy Adams Oil Co.	RF180-17
8/14/85	Nilsen/Al's Place	RF141-14
8/14/85	Aminol/Martin Gas Sales	RF139-75
8/14/85	Aminol/Georgia Pacific Corp.	RF139-76
8/15/85	Aminol/Smithfield Oil & Gas Co.	RF139-77
8/15/85	St. James/Marvo Oil Company	RF180-18
8/15/85	Aminol/Btu-Gas Co., Inc.	RF139-78
8/15/85	Husky/Iowa	RF161-9
8/15/85	Husky/J&B Oil Company	RF161-10
8/15/85	Boswell/National Steel Corp.	RF179-4
8/15/85	Aminol/Carolina Energy of Shelby, Inc.	RF139-83
8/15/85	Good Hope/Kerr-McGee Corporation	RF189-1
8/16/85	Husky/Brady Oil Company	RF161-11
8/16/85	Warren Holding/Big S Oil Co., Inc.	RF169-5
8/16/85	Inland/Len Thoele Service	RF176-3
8/16/85	Cibro/Public Fuel Service Co., Inc.	RF184-2
8/16/85	Red Triangle/Alfred G. Marmolejo	RF178-9
8/16/85	Red Triangle/Raul G. Marmolejo	RF178-10
8/16/85	Aminol/C&D Gas Company	RF139-81
8/16/85	Aminol/B&W Gas Company	RF139-80
8/16/85	Aminol/Ohio Gas Company	RF139-79
8/16/85	Aminol/Your Comfort Heating Co.	RF139-82

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.**ACTION:** Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$21,200 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Harris Enterprises, Inc. of Portland, Oregon (Case No. HEF-0087). The fund will be available to customers who purchased refined petroleum products from Harris during the consent order period.

DATE AND ADDRESS: Refund applications for a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the *Federal Register* and should be addressed to: The Harris Enterprises, Inc. Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case No. HEF-0087.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by Harris Enterprises, Inc. of Portland, Oregon. The consent order settled possible pricing violations with respect to the firm's sales of motor gasoline, No. 2 fuel oil, and No. 1 heating oil to customers during the November 1, 1973

through August 31, 1974 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on May 23, 1985, 50 FR 24032 (June 7, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the *Federal Register*. Applications will be accepted from customers who purchased refined petroleum products from Harris during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order.

Dated: August 27, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order

Special Refund Procedures

Name of Firm: Harris Enterprises, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0087.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such

persons' injuries. For a more detailed discussion of Subpart V, see *Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982), and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Harris Enterprises, Inc. (Harris) of Portland, Oregon.¹ Harris sells refined petroleum products in the states of Oregon and Washington to other petroleum marketers (resellers) and to end-users in bulk sales and through 16 company-operated retail stations. Harris is therefore a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31. An ERA audit of Harris' operations during the period November 1, 1973 through August 31, 1974 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Harris and the DOE regarding those alleged violations, the firm entered into a consent order with the DOE on June 11, 1979.² The consent order covers Harris' sales of regular and ethyl motor gasoline, No. 1 stove (heating) oil, and No. 2 fuel oil during the ten-month audit period (hereinafter the consent order period). The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Harris does not admit that it committed any such violations. In executing the consent order, Harris agreed to refund the alleged overcharges to its retail customers through price rollbacks at its stations and to issue refunds to its wholesale customers "in a manner directed by DOE." See Consent Order ¶¶10 and 11. An attachment to the consent order sets forth the names and addresses of the wholesale customers who were allegedly overcharged by

Harris, along with the designated refund amounts.

Harris implemented a price rollback at its retail outlets and began making refunds to its wholesale customers pursuant to the consent order. However, in March 1980, Harris notified the DOE that, due to the fact that a number of its customers had changed addresses or gone out of business, it was impossible for it to complete its refund obligations to wholesale customers. Harris proposed that it satisfy the \$55,741 balance of the firm's refund obligation by donating heating oil to various charities. The ERA rejected this proposal. After further negotiations, on July 17, 1981, Harris and the ERA amended the June 11, 1979 consent order and agreed that Harris' obligations under the consent order would be satisfied if the firm remitted \$21,200 to the DOE for deposit in an interest-bearing escrow account for later disbursement. In modifying the original consent order, the DOE and Harris agreed that the refund to Harris' retail station customers had been completed.

On May 23, 1985, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Harris' alleged regulatory violations. See *Harris Enterprises, Inc.*, Case No. HEF-0087 (May 23, 1985) (Proposed Decision), 50 FR 24032 (June 7, 1985). In the Proposed Decision, we described a process for the distribution of funds made available pursuant to the Harris consent order. Specifically, we proposed to disburse funds on a percentage basis to wholesale claimants who were identified in the consent order as having been allegedly overcharged, but who did not receive their full designated refund. Several firms filed comments in connection with the Proposed Decision. These comments do not object to the specific procedures tentatively established in the Proposed Decision but instead question the accuracy of our information concerning the refunding which Harris made to wholesale customers.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. We have received no comments challenging our authority to fashion special refund

procedures in this case. The OHA will therefore grant the ERA's petition and assume jurisdiction over the Harris consent order fund.

III. Refund Procedures

Since we did not receive any comments objecting to the procedures tentatively established in the Proposed Decision, we have concluded that the proposed procedures should be adopted. The Harris consent order fund will be distributed to wholesale claimants who satisfactorily demonstrate that they were injured by Harris' pricing practices during the ten-month consent order period (November 1, 1973 through August 31, 1974). As indicated above, an attachment to the Harris consent order identifies the wholesale customers who were allegedly overcharged by Harris. These customers are listed in Appendices A, B, and C of this Decision and Order. We have determined that these were the parties who were most likely injured by the Harris pricing practices that were alleged to be in violation of the price regulations. These firms include both resellers (wholesalers and retailers) and end-users of the products purchased from Harris.

In prior refund proceedings, we have required resellers of refined petroleum products purchased from a consent order firm to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased the product from the consent order firm market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. See *OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition the reseller refund claimant is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. See *Office of Enforcement*, 10 DOE ¶ 85,029 (1982), *Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 (1985). The maintenance of a bank does not, however, automatically establish injury. See *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

In this case, however, as in many other refund proceedings, we will adopt

¹ Harris Enterprises, Inc. includes the following affiliated companies: Premium Oil Company, Harris Distributing Company, Harris Oil Company, Tiger Oil Company, and two Thrifty Rent-A-Car outlets. During the audit, the ERA did not have sufficient sales price data from Tiger and the Thrifty outlets to evaluate their compliance with the DOE regulations. Accordingly, their operations were not included in the Harris audit and are not covered by the consent order.

² The consent order specifically settled only overcharge claims arising from Harris' alleged (i) grouping of certain customers into improper classes of purchaser, (ii) adding excessive freight costs for deliveries to certain customers, and (iii) misapplying non-product cost rules. Consent Order ¶¶3, 4 and 5.

a presumption of injury with respect to small claims filed by resellers. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. See 10 CFR 205.282(e). The presumption we will adopt in this case is used in an effort to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Harris consent order is based on a number of considerations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased covered products from Harris and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we will adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are

especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we find that the establishment of a presumption of injury for all claims of \$5,000 is reasonable.³ See *Texas Oil & Gas Corp.*; *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption we are adopting with respect to small claims, we find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. See *Office of Enforcement*, 10 DOE ¶ 85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. Therefore, end-users of Harris petroleum products will not be required to document the extent of injury incurred from the alleged overcharges. See generally *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984).

IV. Distribution of Consent Order Funds

In many cases the ERA audit files may not provide conclusive evidence as to the identity of all eligible parties or the amount of money they should receive in a Subpart V proceeding. However, we have determined that it is appropriate in the present case to use the information in these files to determine eligibility for refunds. In relying on this information, we note that the ERA audit of Harris had been substantially completed, a Notice of Probable Violation (NOPV) had been issued, and the allegedly overcharged parties were well defined, as evidenced by the attachment to the Harris consent order. In addition, we have not received any comments specifically objecting to this proposal. Accordingly, we will limit eligibility for refunds in this proceeding to those firms identified in the attachment to the Harris consent order.

³ All of the potential refunds calculated in accordance with the methodology set forth in Part IV of this Decision and Order fall below the \$5,000 threshold amount (see Appendix A). Therefore, no applicant will be required to submit detailed evidence of injury in order to qualify for the refund set forth in Appendix A.

In the Proposed Decision, we also proposed to use the information provided in the attachment to the consent order in conjunction with the information in a report dated March 13, 1980 which lists the refunds Harris had already made to wholesale customers as of that date, to fashion a refund plan which would correspond closely to the injuries experienced. According to the information we have in the ERA audit files concerning Harris' compliance with the June 11, 1979 consent order, Harris made refunds to its wholesale customers in unequal amounts.⁴ For example, the March 13, 1980 record indicates that Harris had refunded as much as 97 percent of one customer's total refund and none of another customer's designated refund. In the absence of any later documentation of additional refunds from Harris to its customers, we are presuming that the information in the ERA audit file dated March 13, 1980, is a reliable measure of the amount of refunds disbursed by Harris.

In order to allocate the consent order fund of \$21,200 plus interest equitably among Harris' wholesale customers, we have allocated the principal of the escrowed consent order fund so that each wholesale applicant will be able to receive at least 90.202 percent of the amount which it was originally scheduled to receive pursuant to the consent order. We recognize that some of Harris' wholesale customers have already received from Harris more than 90.202 percent of the refund amount specified for them in the consent order. We do not believe that it is appropriate to make those firms relinquish a portion of their refunds, and we have concluded that equitable factors require that they not receive any additional refunds from the Harris consent order fund. The wholesale customers who will receive a refund under our plan along with the share of the settlement amount allotted to each to raise the refund to 90.202 percent of the original amount, are listed in Appendix A to this Decision and Order.

We received comments from two firms listed in Appendix A who state that they do not recall receiving any refund check from Harris. Since refunds were made through price reductions, the firms were apparently unaware of any

⁴ In an August 15, 1985 telephone conversation with Harris we learned that Harris distributed wholesale refunds through price reductions. As a result, no check or credit memorandum was issued to customers. Nor, apparently was any separate written notification provided to inform customers of the refund. See Memoranda of Telephone Conversation between Richard T. Harris of Harris and Diane S. Wasch of OHA.

refund that was taking place. Thus, a firm which never received notification of a refund may still have received a refund (see n.4). Since the ERA was convinced at the time of the consent order's modification as to the accuracy of the information submitted by Harris concerning the amounts of the refunds effectuated by the firm through price reductions, we believe that the information in the audit files is accurate and should be relied upon to determine the remaining refunds to be made. We will, however, permit firms who did not receive price reductions in the indicated amounts from Harris to file for a larger refund than the amount set forth in Appendix A. In the event additional refunds are approved, we will recalculate the percentage distribution of the escrow account.

Those Harris customers who would be eligible to receive a refund, but who we have been unable to locate, have not been included in our allotment of refunds. These firms are listed in Appendix B.⁵ Those Harris customers who received 90.202 percent or more of the original consent order amount attributable to them, and are thus considered ineligible for additional refunds based on Harris' alleged violations, are listed in Appendix C.

Finally, we will establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See *Uban Oil Co.*; see also 10 CFR 205.286(b).

V. Refund Application Procedures

We have determined that the procedures described in the Proposed Decision are the most equitable and efficacious means of distributing the Harris consent order fund. Accordingly, Applications for Refunds will now be accepted from parties who purchased Harris petroleum products during the consent order period. All Applications for Refund should prominently display Case No. HEF-0087 and the applicant's name on the first page, and include the following information:

1. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.
2. The manner in which the applicant used the Harris petroleum product, i.e. whether it was a reseller or end-user.
3. The volume of each Harris petroleum product the applicant purchased by month for the period of time for which it is claiming a refund. If the claimant is unable to document its volume information, it may instead submit a statement verifying that it purchased Harris petroleum products and is willing to rely on the data in the audit files.
4. A statement indicating whether the applicant was in any way affiliated with Harris. If so, it should state the nature of the affiliation.
5. Whether there has been any change in ownership of the entity that purchased Harris petroleum products since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided, along with support why the refund should be issued to the applicant.
6. A statement indicating whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. See 10 CFR 205.9(d).
7. Each Application must also include the following statement:⁶

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant that believes its Application contains confidential information must so indicate on the first page of the Application and submit two additional copies of its Application from which the confidential material has been deleted together with a statement specifying why the information is claimed to be privileged or confidential.

All Applications should be sent to: The Harris Enterprises, Inc. Refund Proceeding, Office of Hearings and

Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C., 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the Federal Register. See 10 CFR 205.284. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Harris Enterprises, Inc. pursuant to the consent order executed on June 11, 1979 and modified on July 17, 1981 may now be filed.

(2) All Applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register.

Dated: August 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Harris Enterprises, Inc., Customers Due Refunds

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 90.202 percent of consent order refund amount
Joe Reese, 1 N. Fremont, Portland, OR 97227.	\$250	\$1,440
Maurice Brooks, 3331 Franklin Blvd., Eugene, OR 97403.	492	672
Gov-Mart, 705 Rainier Ave. South, Renton, WA 98055.	16,747	1,843
Max Klemen, 4774 Franklin Blvd., Eugene, OR 97403.	219	62
Len Remington, 595 N. Pacific Highway, Woodburn, OR 97071.	316	13*
Ron Sigler, 18777 SE McLoughlin, Milwaukie, OR 97222.	938	1,183
Bill Audrain, Central Oregon Oil, 15th & Highland, P.O. Box 188, Redmond, OR 97756.	1,111	3,931
Hillcrest Oil Company, Evelyn Hopper, 3970 SW 91st Court, Portland, OR 97225.	3,767	2,784
Donald Mendenhall, P.O. Box 293, Sisters, OR 97759.	174	24
Gray's Crane & Rigging Int'l., P.O. Box 29161, Portland, OR 97229.	209	295
Fill Up, 205 Columbia NE, Salem, OR 97303.	1	94
A.L. Morris & Son, 15735 NE Fargo Court, Portland, OR 97230.	4,058	3,395
Jack McGuire, 2844 Gales Way, Forest Grove, OR 97116.	455	421
Priest Petroleum Products, 2406 NW Eleven Mile Avenue, Gresham, OR 97027.	262	421
McCall Oil, 5136 SW Corbett, Portland, OR 97233.	0	606
Grace Oil Co., 5822 SE Santiam Hwy., Albany, OR.	167	134
Ralph Lockrem, 4525 SW Philomath Blvd., Corvallis, OR 97330.	2,519	473
Widing Transportation, 10145 N. Portland Rd., Portland, OR 97217.	661	170
Mac's Super Service, 4003 McKinley Ave., Tacoma, WA 98404.	1,106	1,095
R.L. Barrett, 3317 Auburn Way North, Auburn, WA 98002.	88	261

⁵ In the Proposed Decision, we proposed that any firm whom we were unable to locate be removed from the list of eligible claimants and that their refund be redistributed to the remaining firms. See Proposed Decision at n.4. We have received no comments in opposition to this proposal. We have therefore allocated the consent order funds only among the firms for whom we have current addresses. In the event that the firms in Appendix B file successful refund applications, however, we will recalculate the percentage distribution of the escrow account.

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 90.202 percent of consent order refund amount
Thermco, Inc., P.O. Box 976, Tacoma, WA 98401	1,141	570
Total refunds due (exclusive of interest)		21,200
Reinhard Oil, 5322 Dallas Hwy., Salem, OR 97304	31	7

¹ Principal below \$15 minimum, but with interest will reach \$15 threshold.

² Reinhard Oil's potential refund falls below the \$15 minimum, even with interest included. Therefore, it will not receive a refund in this proceeding.

Appendix B—Harris Enterprises, Inc., Firms We Are Unable To Locate

Applegate Dairy
Kenneth Bolton
Ed Krskine/Frank Harding & Son
Haley's Heating Oils
Bazar, Inc.
Earl Moore
Defiance Oil Company

Appendix C—Harris Enterprises, Inc., Wholesale Customers Who Received At Least 90.202 percent Of Refund Due Under Consent Order

J.R. Bales*
Mike Heidt*
John Jersey & Son*
Jack Gross*
Powell Distributing Co., P.O. Box 17194,
Kenton Station, Portland, OR 97200
L&M Transportation, Box 519, Winston,
OR
Fletcher Oil Company, 606 Alexander
Street, Tacoma, WA 98421
Gull Oil, 3404 Fourth Avenue South,
Seattle, WA 98124
Champion Petroleum, 9125 N. Burrage,
Portland, OR 97217
[FR Doc. 85-21261 Filed 9-5-85; 8:45 am]
BILLING CODE 6450-0-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42053A TSH-FRI 2884-3]

Alkyl Epoxides; Decision Not To Test

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is terminating its rulemaking proceeding under section 4(a) of the Toxic Substances Control Act (TSCA) to require testing for certain alkyl epoxides. EPA's analysis of data now available indicates that few people

are exposed to these chemicals, exposure levels are low, and only small amounts of these chemicals are released to the environment. Existing information on health effects does not suggest an unreasonable risk at expected exposure levels.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is not proceeding with its rulemaking under section 4(a) of TSCA to require health effects or chemical fate testing of certain alkyl epoxides.

I. Background

A. ITC Recommendations and ANPR

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC transmitted its First Report to the Administrator of EPA, as published in the *Federal Register* of October 12, 1977 (42 FR 55026), and designated the category "alkyl epoxides" for priority testing consideration for mutagenicity, carcinogenicity, teratogenicity, other chronic effects (with emphasis on organ effects and behavioral changes), and environmental fate. Epidemiological studies were also recommended for priority consideration for two or three of the highest exposure compounds, if suitable cohorts could be identified.

In response to the ITC, EPA published notices in the *Federal Register* of January 3, 1984 (49 FR 200) for ethylene oxide, and January 4, 1984 for propylene oxide (49 FR 430) and 1,2-butylene oxide (49 FR 503). The remaining category members were addressed in an Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* of January 4, 1984 (49 FR 449). The ANPR solicited additional information on the production, use, exposure, and release of these chemicals, as well as health and environmental effects data not previously submitted to EPA. Several approaches to testing these chemicals were also raised for public comment.

In evaluating the ITC's testing recommendations for members of the alkyl epoxides category, EPA considered all relevant information including the following: information presented in the ITC's report

recommending testing consideration, TSCA section 8(d) submissions, comments and information received in response to the ANPR, additional information provided by a manufacturers and processors, and published and unpublished data available to the Agency.

B. Category Members

The ITC defined the alkyl epoxides category as noncyclic aliphatic hydrocarbons bearing one or more epoxide functional groups.

EPA has identified from the nonconfidential (public) TSCA Chemical Substances Inventory six short-chain (up to four carbon atoms) alkyl epoxides and eight longer-chain (greater than nine carbon atoms) alkyl epoxides that fit the alkyl epoxides chemical category definition. No additional alkyl epoxides are listed in the confidential portion of the Inventory. Of the short-chain compounds, three have been addressed in separate *Federal Register* documents: ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). This notice addresses the remaining three short-chain compounds and eight long-chain substances shown in the following Table 1.

TABLE 1.—ALKYL EPOXIDES ADDRESSED IN THIS NOTICE

Chemical	CAS No.
Short-chain	
2,3-Epoxybutane	(CAS No. 3296-23-7)
Isobutylene oxide	(CAS No. 558-30-5)
1,2,3,4-Diepoxybutane	(CAS No. 1464-53-5)
Long-chain	
1,2-Epoxydecane	(CAS No. 2404-44-6)
1,2-Epoxydodecane	(CAS No. 2855-19-8)
1,2-Epoxytetradecane	(CAS No. 3234-28-4)
1,2-Epoxyhexadecane	(CAS No. 18633-25-5)
1,2-Epoxyoctadecane	(CAS No. 7320-37-6)
1,2-Epoxyheptadecane	(CAS No. 22092-38-2)
1,2-Epoxyoctadecane	(CAS No. 7390-81-0)
1,2-Epoxytridecane	(CAS No. 67850-04-2)

Any other alkyl epoxides would be subject to premanufacture notification and EPA review under TSCA section 5 prior to their being manufactured or imported for purposes subject to TSCA jurisdiction.

C. Public Comments

Any agency received comments on the ANPR from two sources: Viking Chemical Co. and Union Carbide Corp., both manufacturers of long-chain alkyl epoxides. Viking's comments were submitted as Confidential Business Information (CBI) and contained information on production volumes, workplace and consumer exposure, and reasons why additional testing was not warranted. Union Carbide,

* Firms which we were unable to locate.

manufacturer of 1, 2-epoxyhexadecane, submitted recent results of Ames assays and a Sister Chromatid Exchange test, and updated production data (CBI) (Ref. 1; non-CBI version). Union Carbide stressed that the number of persons involved in the manufacture of 1,2-epoxyhexadecane is small and that the physical properties of the chemical (high boiling point of 315° C) and the personal protection employed would substantially limit exposure. It also stated that existing toxicity data and the low production volume of these chemicals did not justify additional testing of the long-chain alkyl epoxides.

D. Regulatory Development

Under section 4(a)(1) of TSCA, EPA shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in which both exposure and toxicity information are considered in making a section 4(a)(1)(A)(i) finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure, or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can

require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed at 45 FR 48528, and the section 4(a)(1)(B) finding is discussed at 46 FR 30300.

II. Review of Available Data

A. Human Exposure and Environmental Release

The short-chain alkyl epoxides are produced or imported in small volumes (Ref. 2). Isobutylene oxide is produced infrequently on a custom basis by Chemical Samples Co., Inc., Arco Chemical Co. and Research Organic/Inorganic Chemical Co. for use as a research reagent. 2,3-Epoxybutane is produced in volumes less than 100 lb/yr by International Flavors and Fragrances, Inc., for use as a captive intermediate for the production of flavors and fragrances. Columbia Organic Chemicals Co. imports less than 10 lb/yr. of 1,2,3,4-diepoxybutane for use as a research chemical. The production information for the three short-chain alkyl epoxides suggests very little, if any, human exposure or environmental release and does not support a finding of significant or substantial exposure to these chemicals.

All the long-chain alkyl epoxides are produced by Viking Chemical Co. In addition, Union Carbide produces 1,2-epoxyhexadecane, which is the highest volume chemical of the long-chain alkyl epoxides. Production volumes for long-chain alkyl epoxides were submitted as CBI. The Agency concludes from these submissions that the production volumes are not substantial. In general, they are specialty chemicals, several being produced on a custom basis, having limited use primarily as reactive intermediates. Non-CBI submissions

obtained from processors described uses such as additives for printing inks for plastics, petroleum additives to prevent hazing in finished products, intermediates for surfactants for speciality chemical blends, and use as experimental chemicals in product development (Ref. 3). The highest amount of residual epoxide reported in a finished product was 2-percent, in a petroleum additive. However, for these additives, concentrations are further reduced by secondary processors producing final products with epoxide concentrations less than 1-percent. In addition, these products appear to be used primarily in industrial equipment such as hydraulic devices that operate as closed systems. The hydraulic fluids are recycled until they can no longer be reconditioned and are then burned as a fuel supplement (Ref. 4). No nonindustrial consumer populations were identified. In the manufacturing and processing of long-chain alkyl epoxides, potential exposure to the pure chemical occurs during loading of the reactor or mixing vessel. Voluntary use of protective clothing and equipment design minimize the potential for exposure. From information supplied to the Agency, EPA estimates that fewer than 100 persons are exposed to all the long-chain alkyl epoxides in the manufacturing and processing of these chemicals.

Information submitted as CBI by the manufacturers and some processors leads the Agency to conclude that environmental releases of long-chain alkyl epoxides are not substantial. Non-CBI submissions by processors (Ref. 3) indicate that minor discharges may occur in equipment cleanup procedures. Several processors indicate such releases to be 1 lb/yr or less. In some cases, waste includes an organic phase, which is typically burned or processed by a waste disposal contractor.

B. Health Effects

Discussions of the toxicity data for high-production short-chain alkyl epoxides appear in separate Federal Register notices on ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). The following health effects have been reported for one or more of these three compounds: carcinogenicity, mutagenicity, neurotoxicity, and reproductive toxicity.

EPA has conducted an evaluation of published and unpublished literature for the chemicals discussed in this notice. No toxicity data were found for 2,3-epoxybutane. Acute toxicity studies, using Department of Transportation test

protocols, determined that isobutylene oxide was caustic in an eye irritation study (rabbit), negative in a dermal irritation study (rabbit), and classified "nontoxic" (dose: 500 mg/kg) in an acute oral toxicity study (rat) (Ref. 5). Isobutylene oxide was not mutagenic in Ames strains TA98, TA100, and TA1537, with or without activation (Ref. 5), but DNA damage was observed at several dose levels in an Alkaline Elution Assay using Chinese hamster lung fibroblast (V-79) cells (Ref. 5).

Information on 1,2,3,4-diepoxybutane shows acute toxicity with an inhalation LC_{50} (rats) of 90 ppm for a 4-hour exposure, an oral LD_{50} of 78 mg/kg, and a dermal LD_{50} of 89 mg/kg (rabbits) (Ref. 6). Also, the substance elicited a carcinogenic response in a number of studies using a dermal or subcutaneous route of administration (Refs. 7, 8, 9, 10, and 11). In addition, teratogenic effects have been reported in studies using rats and chickens (Ref. 12), and a mutagenic response was reported for a number of test systems (Refs. 13, 14, 15, and 16).

Some acute toxicity data are available on the long-chain alkyl epoxides (specific gravity and animal weight not provided) (Ref. 17). For several mixed long-chain 1,2-epoxides, rat (i.p.) LD_{50} values were in the range of 4.9 to 7.5 "ml/kg," while rabbit dermal LD_{50} 's were in the range of 5.0 to 14.1 "ml/kg." For 1,2-epoxyhexadecane the corresponding values were 4.9 "ml/kg" (rat) and 10.0 "ml/kg" (rabbit). Skin irritation (rabbit) was "moderate" or "minor"; eye injury (rabbit) was graded as "none" or "trace" (Ref. 17).

Several test systems for mutagenicity have produced negative results for 1,2-epoxyhexadecane. Both Ames tests conducted by NTP (4 strains, with and without activation) (Ref. 18) and Ames tests commissioned by Union Carbide (5 strains, with and without activation) (Ref. 1) found 1,2-epoxyhexadecane to be nonmutagenic. In addition, 1,2-epoxyhexadecane was negative in a Sister Chromatid Exchange test using Chinese hamster ovary (CHO) cells without activation (Refs. 1 and 19). Other long-chain alkyl epoxides, 1,2-epoxydecane, 1,2-epoxydodecane, 1,2-epoxytetradecane, and 1,2-epoxyoctadecane are being evaluated in the Ames test by NTP (Ref. 20).

Additional information on the toxicity of long-chain alkyl epoxides is available from a subchronic study on 1,2-epoxyhexadecane applied dermally to rats and mice, completed in 1980 for the National Toxicology Program (NTP). Dosages given to both species were 62.5, 125, 250, 500, and 1,000 mg/kg. The material (1,2-epoxyhexadecane in

acetone) was applied 5 times weekly to a one-inch square, shaved portion of the dorsal area for 13 weeks. Some mortality was observed in the mouse at doses of 250 mg/kg and above; none was observed in the rat. Cutaneous reactions, manifested by exfoliation of the stratum corneum, alopecia, hyperemia and/or balancing were seen at the application sites in male mice and rats receiving dose levels of 250, 500, and 1,000 mg/kg; in female mice receiving 1,000 mg/kg; and in female rats receiving 500 and 1,000 mg/kg. Reduced body weights were observed in male mice and rats dosed at 250 mg/kg and above and female rats dosed at 500 and 1,000 mg/kg. No other compound-related effects were observed on gross or histopathologic examination (Ref. 21).

Van Duuren *et al.* (Ref. 22) tested 1,2-epoxydodecane and 1,2-epoxyhexadecane separately in mouse skin painting studies to assess their oncogenic activity. No tumors were observed in a group of 30 ICR/Ha Swiss mice treated for 540 days (18 months) with approximately 100 mg of a 2-percent solution of 1,2-epoxydodecane in acetone (applied to the clipped back of each mouse three times per week from the age of 8 weeks). However, in an experimental group of 41 mice similarly treated with a 10-percent solution of 1,2-epoxyhexadecane in acetone, two mice developed papillomas and one papilloma developed into a squamous carcinoma. The test duration was 598 days, with a median survival time of 427 days. The first papilloma appeared on day 308, and the carcinoma appeared on day 372. No tumors were reported for the control group. No statistical analysis of the data was presented.

To confirm the results of Van Duuren *et al.*, and to test a representative long-chain, terminal monoepoxide, the NTP selected 1,2-epoxyhexadecane to undergo a 2-year bioassay in B6C3F1 mice and Fisher 344 rats by dermal application (Ref. 23). The exposure phase of the test was completed in June 1982. Doses of 62.5 and 125 mg/kg were applied to a 1-inch square shaved portion of the dorsal area of the mice and rats 5 times per week. The results from this study may be available by June 1986 (Refs. 23 and 24).

C. Chemical Fate

No experimental chemical fate information is available for the alkyl epoxides addressed in this notice. The short-chain alkyl epoxides are estimated to have high water solubilities (2×10^5 ppm) and to partition primarily into the water phase under equilibrium conditions ($\log K_{ow} = 0.67$) (Ref. 25). The

soil adsorption coefficient ($K_{oc} = 4.2$) (Ref. 25) indicates that the short-chain alkyl epoxides would not adsorb strongly to organic matter and would be highly mobile in soils and sediments. On the basis of an estimated bioconcentration factor of 1.08, these chemicals are not expected to accumulate in environmental organisms (Ref. 25). The reactivity of epoxides toward water will preclude persistence of these water-soluble epoxides in the environment.

The long-chain alkyl epoxides are expected to behave very differently than the short-chain chemicals. The calculated water solubilities for the long-chain alkyl epoxides are low (6×10^{-4} ppm) (Ref. 25), and calculated logs of the octanol/water partition coefficients are on the order of 6 or 7 (Refs. 25 and 26), indicating that these chemicals will partition primarily into the soil/sediment compartment under equilibrium conditions. The calculated soil adsorption coefficient ($K_{oc} = 2 \times 10^5$) (Ref. 25) indicates that the long-chain alkyl epoxides will adsorb strongly to organic matter in the soil and sediment and can be considered relatively immobile. An estimated bioconcentration factor of 1.7×10^5 indicates that these chemicals could bioconcentrate in the environment if significant releases occurred and the organisms were exposed before the epoxides were bound to soil and sediments. (Ref. 25). The epoxide function is likely by its nature to react with water or other nucleophiles, but these reactions may be slow because of the low water solubility.

III. Decision Not To Initiate Rulemaking

EPA has decided not to proceed with its rulemaking to require health effects or chemical fate testing for the short-chain and long-chain alkyl epoxides addressed in this notice. The ITC recommended testing for the category of all noncyclic aliphatic hydrocarbons with one or more epoxy functional groups because of the effects known to be produced by the higher production short-chain epoxides ethylene oxide, propylene oxide, and 1,2-butylene oxide and the carcinogenic effects reported for diepoxides. The high production epoxides have been addressed in other notices: ethylene oxide (49 FR 200), propylene oxide (49 FR 430), and 1,2-butylene oxide (49 FR 503). Of the remaining category members, the three short-chain chemicals, i.e., 2,3-epoxybutane, isobutylene oxide, and 1,2,3,4-diepoxybutane, are produced or imported in low volumes, and their use limited primarily to research. Although

there is reason to believe that these chemicals may present a hazard because of their similarity to other short-chain category members and data available for 1,2,3,4-diepoxybutane, the current production, use, exposure, and environmental release of these chemicals do not support a section 4(a)(1)(A)(i) finding of "may present an unreasonable risk" or 4(a)(1)(B)(i) finding of "substantial production" and "significant or substantial exposure" or "substantial release" for health effects or chemical fate testing.

The eight long-chain alkyl epoxides behave differently than their short-chain counterparts. There are significant differences in chemical structure and expected chemical fate behavior. Toxicity data for 1,2-epoxyhexadecane do not indicate mutagenic activity. A long-term skin painting study was negative for 1,2-epoxydodecane, and a similar study produced one carcinoma for 1,2-epoxyhexadecane. A second skin painting study of 1,2-epoxyhexadecane has also been conducted by NTP; however, the results of this study are not available at this time. Although production for these long-chain chemicals is greater than that of the three short-chain alkyl epoxides addressed in this notice, the Agency does not consider it to be substantial. These epoxides are specialty chemicals with limited use. Little, if any, unreacted epoxide comes in contact with workers or industrial consumers. Known and potential releases to the environment are extremely small. The toxicity data available and data submitted on production volume, use, human exposure, and environmental release do not support a section 4(a)(1)(A)(i) finding of "may present an unreasonable risk" or 4(a)(1)(B) finding of "significant or substantial exposure" or "substantial release" for health effects or chemical fate testing of the long-chain alkyl epoxides.

IV. Public Record

EPA has established a public record for this decision not to test under Section 4 of TSCA (docket number OPTS-42053A). The record includes the following information:

A. Supporting Documentation

- (1) Federal Register notices pertaining to this decision consisting of:
 - (a) Notice containing the ITC Report designating the category alkyl epoxides to the Priority List (42 FR 55026; October 12, 1977).
 - (b) Notice of Advance Notice of Proposed Rulemaking (49 FR 449; January 4, 1984).
 - (c) Notice requiring submission of health and safety data under section 8(d) of TSCA (47 FR 38780; September 2, 1982).

- (d) Notice for ethylene oxide (49 FR 200; January 3, 1984).
- (e) Notice for propylene oxide (49 FR 430; January 4, 1984).
- (f) Notice for 1,2-butylene oxide (49 FR 503; January 4, 1984).
- (2) Communications consisting of:
 - (a) Written public and intra-agency or interagency memoranda and comments.
 - (b) Summaries of telephone conversations.
 - (c) Summaries of meetings.
 - (3) Reports—published and unpublished factual materials, including contractors' reports.

B. References

- (1) Union Carbide Corp., Danbury, CT. Letter containing copies of correspondence with the Agency, ANPR comments, and test data (non-CBI version) from Don Heywood to Ralph Northrop, Office of Pesticides and Toxic Substances, Environmental Protection Agency. April 23, 1984.
- (2) Mathtech, Arlington, Va. Level I Economic Evaluation: Low Volume Alkyl Epoxides. April 1983.
- (3) Anonymous. Non-CBI submissions from processors of long-chain alkyl epoxides. April 1985.
- (4) Elco Corp., Cleveland, OH. Personal communication with Ralph Northrop, Office of Pesticides and Toxic Substances, Environmental Protection Agency. May 13, 1985.
- (5) The Upjohn Co., Kalamazoo, MI. TSCA section 8(d) submission of technical reports for Isobutylene Oxide and 1,2,3,4-Diepoxybutane, 8 DHQ-0978-0144. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.
- (6) Clayton G.D., Clayton, F.E., editors. *Patty's Industrial Hygiene and Toxicology*, p. 2161. 3rd Edition; Volume 2A; John Wiley and Sons, Publisher. 1981.
- (7) Kotin P., Falk H.L. "Organic Peroxides, Hydrogen Peroxide, Epoxides and Neoplasia." *Radiat. Res. Supp.* 3:193-211. 1963.
- (8) Van Duuren B.L., Orris L. and Nelson N. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." II. *J. Nat. Cancer Inst.* 35:707-717. 1965.
- (9) Van Duuren B.L., Langseth L., Orris L., Teebor G., Nelson N., Kaschner M. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." IV. Tumor Response in Epithelial and Connective Tissue in Mice and Rats. *J. Nat. Cancer Inst.* 37:825-838. 1966.
- (10) Van Duuren B.L., Nelson N., Orris L., Palmes E.D., Schmitt F.L. "Carcinogenicity of Epoxides, Lactones and Peroxy Compounds." *J. Nat. Cancer Inst.* 31:41-55. 1963.
- (11) Koppers Co. The potential carcinogenic activity of butadiene dioxide, 1980. TSCA Section 8(d) Submission 8DHQ-0978-0156. Washington, D.C.; Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. 1978.
- (12) Shell Oil Co. Review of the Toxicology of Epoxy Compounds. TSCA Section 8(d) submission 8DHQ-0978-0018. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.
- (13) Kilbey B.J. "The Analysis of a Dose-Rate Effect Found With a Mutagenic Chemical." *Mutat. Res.* 26(4):249-256. 1974.
- (14) Klimczuk J. "Spontaneous and Induced Reversions of Meth 1 Mutant of *Aspergillus nidulans*." *Genet. Pol.* 11(3-4):313-319. 1970.
- (15) Polakowska R., Putrament A. "Mitochondrial Mutagenesis in *Saccharomyces cerevisiae*. II. Methyl Methanesulphonate and Diepoxybutane." *Mutat. Res.* 61:207-213. 1979.
- (16) Wade M.J., Moyer J.W., Hine C.H. "Mutagenic Action of a Series of Epoxides." *Mutat. Res.* 66:367-371. 1979.
- (17) Union Carbide Corp. Listing of health and safety studies. TSCA Section 8(d) submission 8DHQ-0978-123. Washington, D.C.; U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. 1978.
- (18) National Toxicology Program. Summary of Genetic testing at EMDP Lab. Dr. Errol Zeiger. NTP NIEHS, Research Triangle Park, NC. January 11, 1982.
- (19) USEPA. Memorandum: "Evaluation of a Sister Chromatid Exchange Test for 1,2-Epoxyhexadecane." From J. Baumele, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. December 26, 1984.
- (20) National Toxicology Program. Personal communication on the status of mutagenicity testing for long-chain alkyl epoxides between EMDP Lab and Andrea Blaschka, Office of Pesticides and Toxic Substances, Environmental Protection Agency. May 23, 1985.
- (21) National Toxicology Program. A subchronic test of 1,2-epoxyhexadecane (55538) in B6C3F1 mice and Fischer 344 rats by dermal application. Tracor Jitco Subcontract No. 78-61-106002; Gulf South Research Institute, Project No. 410-827. Dr. Ron Milnick, Project Officer, NTP, NIEHS, Research Triangle Park, NC. 1980.
- (22) Van Duuren B.L., Langseth L., Goldschmidt B.M., Orris L. "Carcinogenicity of Epoxides, Lactones, and Peroxy Compounds. VI. Structure and Carcinogenic Activity." *J. Nat. Cancer Inst.* 39:1217-1228. 1967.
- (23) National Toxicology Program. Personal communication on the status of the NTP Bioassay for 1,2-epoxyhexadecane between Ron Milnick, NTP, and Andrea Blaschka, Office of Pesticides and Toxic Substances, Environmental Protection Agency. November 21, 1983.
- (24) National Toxicology Program. Personal communication on the current status of studies done by Gulf South Research Institute between James Huff, NIEHS, and Andrea Blaschka, Office of Pesticides and Toxic Substances, Environmental Protection Agency. January 30, 1985.
- (25) USEPA. Memorandum: "Properties of Alkyl Epoxides." From William Wood, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C., July 8, 1982.
- (26) USEPA. Memorandum: "Environmental Fate of Alkyl Epoxides." From William Wood, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C., December 4, 1984.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(15 U.S.C. 2603)

Dated: August 29, 1985.

J. A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-21304 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2892-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed August 26, 1985 Through August 30, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850369, Draft, FHW, KY, KY-44 Reconstruction, KY-55 in Taylorsville to KY-44 Relocated, Spencer County. Due: October 21, 1985, Contact: Robert Johnson (502) 227-7321.

EIS No. 850370, Draft, NASA, PRO, Galileo and Ulysses Mission Projects, Jovian System Investigation Program. Due: October 21, 1985, Contact: Harry Mannheim (202) 453-1602.

EIS No. 850372, Final, FHW, IL, Lake Front Highway/FAP 437 Construction and Improvements, IL Tri-State Tollway/I-94 to Grand Avenue/IL-132, Lake County. Due: October 7, 1985, Contact: Jay Miller (217) 492-4600.

EIS No. 850373, DSUpl, FHW, WA, Pasco-Kennewick Intercity Steel Truss Bridge Removal, Columbia River, between Pasco and Kennewick Cities, Benton and Franklin Cos. Due: October 25, 1985, Contact: Paul Gregson (206) 753-2120.

Amended Notices

EIS No. 820676, Draft, OSM, CO, Meeker Area Mines, Mining and Reclamation Plan. Approval, Rio Blanco Co., Published FR 10-15-82—Officially Withdrawn.

EIS No. 830628, Draft, COE, IL, Kahawainui Stream Flood Control, Laie, Island of Oahu. Published FR 12-9-83—Officially Withdrawn.

Dated: September 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-21355 Filed 9-5-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2892-9]

Environmental Impact Statements; Availability of EPA Comments

Availability of EPA comments prepared August 19, 1985 through August 23, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-L82007-00, Rating E02, Northwest Area Noxious Weed Control Program, ID, WA, MT, OR, and WY. Summary: EPA stated that picloram and glyphosate are currently not registered for range land use in the states covered by the DEIS. Therefore, registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) would be necessary to use these pesticides. Also, some evidence has recently arisen to indicate that glyphosate poses risks of oncogenic effects. This evidence is in the process of further evaluation, however, EPA does not expect any significant risks to human health to result from glyphosate's use in this program. EPA believes that BLM should consider expanding the worst case analysis to include a risk analysis of accidental spills and the risks to biota as well as human health. Additional documentation and evaluation of water quality impacts is also needed.

ERP No. D-CDB-B89016-MA, Rating L0, Tent City Development, Parcels 11A and 11B, S. End Urban Renewal, UDAG, MA. Summary: EPA believes the project, as proposed, can be developed in a manner that will not cause significant adverse impacts on the environment.

ERP No. D-COE-E30033-FL, Rating L02, Martin County Beach Erosion Control, FL. Summary: EPA believes the environmental effects of this action are within acceptable limits and can be materially lessened through the judicious selection of borrow material.

ERP No. D-COE-E67003-FL, Rating E02, Occidental Wetland Phosphate

Mining Operations Dredge and Fill Permit, Sect. 404, FL. Summary: EPA has concluded that the DEIS does not accurately assess the impacts of the proposed mining on fish and wildlife habitat and water quality of the subject headwaters and tributaries of the Suwannee River system. Further, the alternatives presented are limited in scope compared to those indicated in the Plan of Study or otherwise available. The EIS also contains fundamental factual errors regarding the value of wetlands on the project site, probability of replacing mined wetlands with higher quality habitat, and the effects of current mining practices on maintenance of water quality.

ERP No. DS-FHW-B40049-NH, Rating EC2, NH-101 Improvements, Chesham Rd. to Bonds Corner, Right-of-Way Acquisition, Construction, Modified Reconstruction Alternative, 404 Permit, NH. Summary: EPA recommended that the FEIS include for each alternative, a comprehensive impact analysis for domestic water supplies, a more detailed air quality analysis, and proposed mitigation measures that would reduce the impacts.

ERP No. D-FHW-L40146-OR, Rating EC1, Tualatin Valley Highway Widening, 21st Ave. to East Main St., Improvements and Development, OR. Summary: Although some traffic noise impacts of the project are substantial, EPA would have no objections with the project if it includes all noise mitigation.

ERP No. D-IBR-K39028-CA, Rating EC2, Freeman Diversion Improvement Project, Construction and Operation, Santa Clara R., Combat of Seawater Intrusion, CA. Summary: EPA expressed concern that the sedimentation analysis was not carried out far enough downstream of the diversion structure to adequately assess environmental impacts on the major habitats of the Lower Santa Clara River. EPA also requested a greater commitment to mitigation proposals in the FEIS.

ERP No. DS-NOA-B90001-RI, Rating LO, Rhode Island Coastal Resources Mgmt. Program, 1985 Amendment, RI. Summary: EPA believes the amendments to the Rhode Island Coastal Management Program will not cause significant adverse impacts on the environment, and will increase consistency and specificity of the regulatory policies.

Final EISs

ERP No. F-BLM-G08008-NM, El Paso 345 kV Transmission Line, Construction/Operation/Maintenance, Springerville to Deming, Right-of-Way Permit, NM. Summary: EPA has no

objection to the proposed transmission line project as described.

ERP No. FS-COE-E36148-KY, Yatesville Lake Multipurpose and Local Protection Project, Blaine Creek, KY. Summary: EPA has been obligated to use its statutory authority to control the discharge of brines and residues into surface waters of the State of Kentucky. Additional administrative actions are anticipated, and EPA's major concern with this facility, viz., the potential for long-term water quality degradation in the Blaine Creek/Sandy system, has been greatly lessened. Nonetheless, EPA continues to recommend that impoundment only begin after an evaluation of water quality of flows into the proposed lake.

ERP No. F-JUS-A82111-00, Cannabis Eradication on Federal Lands and Intermingled Forest and Rangelands in the Continental U.S. Summary: Based on EPA's review of the information and analyses contained in this programmatic FEIS, and the identification of the Operational Flexibility alternative as the preferred alternative, EPA has no objections to the proposed cannabis eradication program, provided that all appropriate mitigation measures are fully implemented and site-specific analyses are undertaken prior to initiation of individual projects.

ERP No. F-NOA-C64003-00, Shallow-Water Reefish Fishery Mgmt. Plan, PR and VI. Summary: EPA believes that the FEIS adequately addresses the problem of overexploitation of fishery resources and is encouraged by the plan's recommendation to help replenish the fish population stocks of several species.

Regulations

ERP No. R-OSM-A01088-00, Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program, Definitions, Adverse Physical Impact Permanent Program Perf. Stds., 30 CFR Parts 701, 816, and 817, [50 FR 24880]. Summary: EPA agrees with the proposed regulation in its addressment of an environmentally significant aspect of coal mining. EPA commends the OSM for requiring that available spoil be used for backfilling and grading to eliminate highwalls. EPA identified the potential for increased fugitive dust emissions as a concern that could arise during backfilling.

Dated: September 3, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-21356 Filed 9-5-85; 8:45 am]

BILLING CODE 6550-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85-266]

Hearing Designation Order

In re Applications of Big Chief Broadcasting (File No. BPCT-841120KE), South Lake Communications, Inc. (File No. BPCT-841212KH), Non-Profit Television Concepts (File No. BPCT-850214KM), Channel 68, Inc. (File No. BPCT-850214KQ), CFL, Ltd. (File No. BPCT-850215KT), Olympia Broadcasting Group, LTD. (File No. BPCT-850215KZ), C & P Partners (File No. BPCT-850215LT), Robin C. Brandt (File No. BPCT-850215LZ), For Construction Permit, Clermont, Florida.

Adopted: August 19, 1985.

Released: September 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Big Chief Broadcasting (Big Chief), South Lake Communications, Inc. (South Lake), Non-Profit Television Concepts (Non-Profit), Channel 68, Inc., CFL, Ltd., Olympia Broadcasting Group, Ltd. (Olympia), C & P Partners, and Robin C. Brandt, for authority to construct a new commercial television station on Channel 68, Clermont, Florida, and an informal objection filed by the Association of Maximum Service Telecasters, Inc. (AMST) against Olympia.

2. On April 17, 1985, AMST filed an informal objection to the Olympia application on the ground that Olympia's proposed site would be short-spaced to the sites proposed by the six¹ mutually exclusive applicants for channel 61 in Gainesville, Florida.² Olympia did not respond to the AMST objection. An applicant which fails to meet the minimum mileage separation requirements of § 73.610 of the Commission's Rules must make the threshold showing that no fully-spaced site is available. Olympia has made no such showing. Accordingly, an issue will be specified to determine whether circumstances exist which would warrant a waiver of § 73.610 of the Rules. In assessing those circumstances, the Administrative Law Judge will consider the fact that the other

¹ Olympia's site would be short-spaced to only four of the six Gainesville sites (see Footnote 2, below) because, subsequent to the filing of AMST's objection in this proceeding, two of the Gainesville applicants amended their applications to specify different sites. Olympia's site would be fully-spaced to those two sites.

² The four applications for Gainesville with which Olympia would be short-spaced are:

applicants in this proceeding have specified fully-spaced sites.³

American Communication and Television, Inc. (spaced 56 out of a required 60 miles), Cozzin Communication Corporation (spaced 50 out of a required 60 miles), Gainesville Television Group, and Central Florida Broadcasting, Inc. (spaced 49 out of a required 60 miles to both).

3. Section 73.3555(b)(1) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM stations and the grant of such license will result in the Grand A contour of the proposed station encompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities "... will be handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest." Debra L. Anscombe is a general partner and 15% owner of CFL, Ltd. She is also the General Manager of AM Station WSIR, Winter Haven, Florida, and is a 5% limited partner of WHF Associates, Ltd., licensee of Station WSIR, Winter Haven would be within the predicted Grade A contour of the proposed television station. Since Mrs. Anscombe is intricately involved in the day-to-day operation and management of the AM station, her interest limited partnership in that station is not sufficiently insulated so that her interest is attributable. Mrs. Anscombe, however, has stated that if CFL Ltd. is the successful applicant in this proceeding, she will divest her interest in the licensee of the AM station and will resign her position as General Manager. Accordingly, any grant of the application of CFL, Ltd. will be subject to the condition that Mrs. Anscombe sever all interest in and connection with the licensee of Station WSIR.

4. Applicants for new broadcast stations are required to give local public notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We

³ The Gainesville applications were "cut-off" with respect to conflicting applications on October 5, 1984. Olympia's application was filed on February 15, 1985. Olympia is, therefore, required to meet the separation requirements to all of the proposed Gainesville sites.

have no evidence, however, that Olympia has done either. If it has not already done so, Olympia will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 20 days of the release of this Order.

5. Section V-C, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Neither Big Chief nor Non-Profit has specified these figures. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Big Chief and Non-Profit will each be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

6. No determination has been made that the tower heights and locations proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposal of Olympia Broadcasting Group, Ltd. is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the Rule.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, in the event of a grant of CFL, Ltd.'s application, the construction permit shall contain the following condition:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Debra L. Anscombe has divested herself of all interest in, and connection with the licensee of Station WSIR(AM), Winter Haven, Florida.

10. It is further ordered, That Olympia Broadcasting Group, Ltd., shall file a certification with the presiding Administrative Law Judge, within 20 days after this Order is released, that it has or will comply with § 73.3580 of the Commission's Rules.

11. It is further ordered, That Big Chief Broadcasting and Non-Profit Television Concepts shall each submit an amendment stating the area and population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-21289 Filed 9-5-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-267]

Hearing Designation Order

In re Applications of Dorothy J. Owens, (File No. BPCT-85022KG), Harold L. Mullican (File No. BPCT-850422KJ), Lash Communications, a California Limited Partnership (File No. BPCT-850422KK), Liberty Broadcasting Corporation (File No. BPCT-850422KS), Gamez Communications, Limited Partnership (File No. BPCT-850422KT), Crown City TV, Inc. (File No. BPCT-850422LA), For Construction Permit, Bakersfield, California.

Adopted: August 19, 1985.

Released: September 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 48, Bakersfield, California; a late-filed amendment and a motion to accept the amendment filed by LASH Communications (LASH), and comments on the LASH motion filed by Liberty Broadcasting Corporation.

2. The deadline for filing amendments to the above-captioned applications was Friday, June 7, 1985 (the "B" cut-off date). On the following business day, Monday, June 10, 1985, LASH filed an amendment to its application to reflect ownership changes and, on June 13, it filed a motion to accept the late-filed amendment *nunc pro tunc*. Counsel for LASH concedes that the signed amendment was at his office in time to be filed on June 7, but that because of errors in the office, it wasn't filed until the 10th. On July 1, 1985, Liberty Broadcasting Corporation (Liberty), a competing applicant in this proceeding, filed comments arguing that the Commission should accept the amendment for Section 1.65 purposes only and to provide that LASH shall have no comparative advantage as a result of the amendment. LASH contends that it could not have filed earlier because it could not finalize an undescribed decision without one of its general partners who had left the country on May 5 and did not return until June 2.

3. Grant of LASH's motion to accept the amendment as if it were timely filed cannot be justified. The "B" cut-off list was released May 2, 1985; several days before the general partner left the country. Moreover, there is no explanation as to why one of the other general partners did not act on behalf of

the partnership or why the missing partner could not have been contacted by telephone during the one month period between release of the "B" cut-off list and the cut-off date. Finally, confusion in the office of legal counsel cannot excuse a failure to meet an established deadline. Consequently, the motion will be granted to the extent that the amendment will be accepted, but the amendment will be accepted for § 1.65 purposes only and no comparative advantage is to accrue to LASH as a result thereof.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been made that the tower height and location proposed by Harold L. Mullican, Liberty Broadcasting Corporation, Gamez Communications, and Crown City TV, Inc. each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Section 73.685(e) of the Commission's Rules states that stations operating on Channels 14-69 with transmitters delivering a peak visual power output of more than 1 kW may employ directive transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 15dB. Dorothy J. Owens proposes to employ a directional antenna with a peak power which will exceed the allowable maximum to minimum radiation. However, Ms. Owens has requested a waiver of § 73.685(e). Accordingly, an issue will be specified to determine if circumstances exist to warrant waiver of § 73.685(e).

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that O* corresponds to True North and tabulated at least every 10° plus any minima or maxima. Dorothy J. Owens has not supplied this data. Accordingly, Ms. Owens will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the

Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

8. In Section V-C, FCC Form 301, Crown City TV, Inc. specifies its maximum visual effective radiated power as 2692 kW and its antenna height above average terrain as 3742 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Crown City TV, Inc. must submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.¹

9. Section 73.3555(b) of the Commission's Rules states that no license for a television station shall be granted to any party if such party owns, operates or controls an AM or FM broadcast station and the grant of such license will result in the Grade A contour of the television station encompassing the entire community of the AM or FM station. Dorothy J. Owens is the Secretary-Treasurer and a director of Buck Owens Production Company, Inc., the licensee of stations KUZZ(AM) and KKXX(FM), Bakersfield, California. However, Ms. Owens has represented to the Commission that, in the event that she is the successful applicant for Channel 48, she will divest herself of all interest in and connection with the licensee of KUZZ(AM) and KKXX(FM). Accordingly, any grant of a construction permit to Ms. Owens will be conditioned upon Ms. Owens' divestiture.

10. Harold L. Mullican submitted only a partial financial certification. Accordingly, Mr. Mullican will be given 20 days from the release date of this Order to review his financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to his financial qualifications. If the applicant cannot make the required certification, he shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378 (released July 15, 1982).

11. Section 73.2080 of the Commission's Rules requires an applicant for a new television station to afford equal employment opportunity to all qualified persons and to refrain from

discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. Pursuant to these requirements, an applicant who proposes to employ at least five full-time employees must establish a program, which must be submitted to the Commission, designed to assure equal employment opportunity for women and minority groups. Harold R. Mullican and Gamez

Communications have each indicated that at least five full-time employees will be employed. However, neither applicant has submitted a copy of the required equal opportunity program. Accordingly, each will be required to submit an amendment which corrects this omission, to the presiding Administrative Law Judge, within 20 days after this Order is released.

12. Two of the limited partners of Gamez Communications are presently employed in positions that may be inconsistent with the Commission's cross-interest policy. Michael D. Allen is the sales manager at Station KWAC, Bakersfield, California, and Meri Catharine Hopple is a salesperson at Station KLLY(FM), Oildale, California, which is located within the applicant's proposed Grade A contour. Accordingly, an issue will be specified to determine whether Mr. Allen's employment at Station KWAC or Ms. Hopple's employment at Station KLLY(FM) would be consistent with the Commission's cross-interest policy and, if not, whether grant of the Gamez Communications application would be in the public interest.

13. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Harold L. Mullican, Liberty Broadcasting Corporation, Gamez Communications, and Crown City TV, Inc., whether there is a reasonable possibility that the tower height and location proposed by

¹ Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

each would constitute a hazard to air navigation.

2. To determine with respect to Dorothy J. Owens, whether circumstances exist to warrant a waiver of § 73.685(e) of the Commission's Rules.

3. To determine, with respect to Gamez Communications, whether the employment of Michael D. Allen at Station KWAC or the employment of Meri Catharine Hopple at Station KLLY(FM) is consistent with the Commission's cross-interest policy and, if not, whether a grant of the Gamez Communications application would be in the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

15. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, That the "motion to accept late-filed amendment" filed by LASH Communications IS GRANTED to the extent noted herein and the June 10, 1985, amendment IS ACCEPTED for § 1.65 purposes only.

17. It is further ordered, That Dorothy J. Owens shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after the release date of this Order.

18. It is further ordered, That, in the event that Dorothy J. Owens is the successful applicant, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that she has divested herself of all interest in, and connection with, the licensee of Stations KZZZ(AM) and KKXX(FM), Bakersfield, California.

19. It is further ordered, That Crown City TV, Inc. shall submit an amendment to show compliance with § 73.614 of the Commission's Rules pertaining to power and antenna height above average terrain, to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, That Harold L. Mullican shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be

appropriate, within 20 days after this Order is released.

21. It is further ordered, That Harold L. Mullican and Gamez Communications, Limited Partnership shall each submit, as an amendment, an equal opportunity program, to the presiding Administrative Law Judge, within 20 days after this Order is released.

22. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

23. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission,

Roy J. Stewart,

Chief Video Services Division, Mass Media Bureau.

[FR Doc. 85-21292 Filed 9-5-85; 8:45 am]

BILLING CODE 6712-01

FEDERAL RESERVE SYSTEM

Colson, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1985.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Colson, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 80 percent of the voting shares of Washington Bancorporation, Washington, D.C., thereby indirectly acquiring the National Bank of Washington, Washington, D.C.

Applicant has also applied to acquire Washington Mortgage Group, Inc., Tysons Corner, Virginia, thereby engaging in making, acquiring, selling, and servicing residential mortgage loans; principally single- and multi-family mortgages.

2. *Washington National Holdings, N.V.*, Curacao, Netherlands Antilles; to become a bank holding company by acquiring 37.5 percent of the voting shares of Colson, Inc., Wilmington, Delaware, thereby indirectly acquiring The National Bank of Washington, Washington, D.C.

Applicant has also applied to acquire Washington Mortgage Group, Inc., Tysons Corner, Virginia, thereby engaging in making, acquiring, selling, and servicing residential mortgage

loans; principally single- and multi-family mortgages.

Board of Governors of the Federal Reserve System, August 30, 1985.

James McAfee,

Associate Secretary of the Board

[FR Doc. 85-21280 Filed 9-5-85; 8:45 am]

BILLING CODE 6210-01-M

New Superior Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1985.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *New Superior Financial Corporation*, Sault Ste. Marie, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Superior Financial Corporation, Sault Ste. Marie, Michigan.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Financial Corporation*, Topeka, Kansas; to acquire 100 percent of the voting shares of First State Bank and Trust Company, Topeka, Kansas.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brush Country Holding Company, Inc.*, Freer, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Freer Bancshares, Inc., Freer, Texas, thereby indirectly acquiring Brush Country Bank, Freer, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission Valley Bancorp.*, Pleasanton, California; to acquire 100 percent of the voting shares of The Bank of San Ramon, N.A. (in organization), San Ramon, California.

Board of Governors of the Federal Reserve System, August 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21281 Filed 9-5-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 30, 1985.

Public Health Service

Centers for Disease Control

Subject: Dust and Endotoxin Dose Response Relationship for Cotton Dust—New.

Respondents: Individuals or households.

Subject: National Institutes for Occupational Safety and Health Information Dissemination Evaluation—New.

Respondents: Individuals or households.

Subject: National Occupational Health Survey of Mining—Extension (0920-0143).

Respondents: Business or other for-profit institutions, small businesses or organizations.

National Institutes of Health

Subject: Evaluation of the National Institutes of Health Research Career Development Award Program—New.

Respondents: Individuals or households.

Subject: Print and Broadcast Pretesting for the Office of Cancer Communications' Publications and Public Service Messages—New.

Respondents: Individuals or households.

Subject: Cancer Information Service Call Record Form—Reinstatement (0925-0208).

Respondents: Individuals or households.

Subject: Evaluation of Statewide Hypertension Programs.

Respondents: State/local governments, non-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Health Care Financing Administration

Subject: Revision to the Medicaid State Plan Preprint for Medicaid Cost Sharing Provisions-HCFA-179—Revision (0938-0193).

Respondents: State/local governments.

Subject: Evaluation of Social/Health Maintenance Organization Demonstration-HCFA-506—New.

Respondents: Individual or households.

Subject: Joint Commission on Accreditation Hospice Mail Survey Questionnaire-HCFA-505—New.

Respondents: Non-profit institutions, small businesses or organizations.

Subject: Carrier Appeal Report-HCFA-2590—Existing Collection.

Respondents: Non-profit institutions, federal agencies or employees.

Subject: Hospital and Hospital Health Care Complex Cost Report HCFA-2552-85—Revision (0938-0050).

Respondents: Businesses or other for-profit.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Health Insurance Information Request Pilot Study-SSA-5052—New.

Respondents: Individuals.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Office on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: August 30, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for
Management Analysis and Systems.

[FR Doc. 85-21205 Filed 9-5-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 83N-0308]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant and/or Hallucinogenic Drugs; Notice of Public Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit written comments concerning recommendations from the World Health Organization (WHO) that the Commission on Narcotic Drugs (CND) of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, on certain stimulant and/or hallucinogenic drugs. FDA is also announcing that an informal public meeting will be held on October 10, 1985, on the WHO proposals. The comments received in response to this notice and the public meeting will be considered in preparing the United States position on these proposals for a meeting of the CND in Vienna, Austria, in February 1986. This notice requesting written comments is required by the Controlled Substances Act (CSA).

DATES: The public meeting will be held on October 10, 1985, at 8:30 a.m. Comments are due October 7, 1985.

ADDRESSES: The public meeting will be held in Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Written comments should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written notice of intent to participate should be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: By note NAL/CL.14/1983 of July 25, 1983, the Secretary-General of the United Nations requested data and information concerning 30 stimulant/hallucinogenic drug substances. In the Federal Register of September 13, 1983 (48 FR 41096),

FDA requested interested persons to submit data and information to be considered in the preparation of a United States response to the United Nations request. The United States forwarded its response to the United Nations in March 1984. A copy of the information the United States provided is on file in the Dockets Management Branch (address above). This list of stimulant/hallucinogenic drug substances was subsequently modified and reduced to the 28 drug substances listed below:

Cathine (norpseudoephedrine)
Cathinone
Clobenzorex
Dimethoxyamphetamine
Dimethoxybromoamphetamine (DOB)
Ethylamphetamine
Fenbutrazate
Fencamfamin
Fenetylline
Fenproporex
Furfenorex
Levamphetamine
Levomethamphetamine
Mefenorex
Methoxyamphetamine (PMA)
Methylenedioxyamphetamine (MDA)
Morazone
Para-methoxyamphetamine
Pemoline
Propylhexedrine
Pyrovalerone
Trimethoxyamphetamine (TMA)
4-Bromo-2,5-dimethoxyphenethylamine
2,5-Dimethoxy-4-ethylamphetamine (DOET)
N,N-Dimethylamphetamine
N-Ethyl-3,4-methylenedioxyamphetamine (N-Ethyl-MDA)
5-Methoxy-3,4-methylenedioxyamphetamine (MMDA)
3,4-Methylenedioxymethamphetamine (MDMA)

In March 1984, as part of an ad hoc consultative meeting, WHO conducted a review and evaluation of the data and information received from member countries concerning the list of identified stimulant/hallucinogenic drug substances. On the basis of that review, the Director-General of WHO requested assistance in obtaining additional data on 28 of the drug substances (see note NAR/CL.8/1984 issued on June 14, 1984) and recommended that the Secretary-General of the United Nations that WHO was of the opinion that 2 of the substances, 3,4-Methylenedioxyamphetamine (MDA) and 2,5-Dimethoxy-4-Bromoamphetamine (DOB), should be included in Schedule I of the Convention on Psychotropic Substances (see notes NAR/CL.6/1984 and NAR/CL.7/1984 of June 12, 1984, and June 13, 1984, respectively).

Accordingly, in the Federal Register of July 19, 1984 (49 FR 29273), FDA requested interested parties to submit

additional data on the substances. Copies of the information received are on file in the Dockets Management Branch (address above). And, in the Federal Register of August 8, 1984 (49 FR 31773), FDA announced WHO's scheduling recommendation. In response to that Federal Register notice, no adverse comments were received and no party requested a public meeting on the recommendation.

At the meeting of the CND held on February 12, 1985, the CND decided to include both DOB and MDA in Schedule I of the 1971 Convention on Psychotropic Substances. All 40 members of the CND, including the United States, voted in favor of that action. The decision was supported by evidence of actual abuse and recognition of the fact that neither drug substance had any recognized medical use.

During April 1985, the Expert Committee on Drug Dependence met in Geneva and made recommendations concerning the international scheduling of 17 of the remaining stimulant/hallucinogenic substances then under review. As a result of the decisions made at the meeting, WHO has recommended that the CND control 17 stimulant and/or hallucinogenic drug substances under the Psychotropic Convention. Placing these drugs under international controls would require each of the member countries (including the United States) to impose similar levels of domestic control on the drug substances. This could result in the scheduling or possible rescheduling of certain drug substances domestically. It could also require additional reporting requirements by manufacturers of affected substances or the reclassification of drug substances from over-the-counter to prescription status. See section 307(e) of the CSA (21 U.S.C. 827(e)) as amended by the Psychotropic Substances Act of 1978 (Pub. L. 95-633).

The formal WHO notification, which identifies the 17 substances and explains the bases for the recommendations is reproduced below:

United Nations—Nations Unies

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honor to inform the Government that the World Health Organization, pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances, has notified the Secretary-General by notes dated 20 May 1985 that it is of the opinion that the seven substances Cathinone, Dimethoxyamphetamine (DMA), Paramethoxyamphetamine (PMA), Trimethoxyamphetamine (TMA), Dimethoxy-4-ethylamphetamine (DOET), 5-Methoxy-3,4-

methylenedioxymphetamine (MDMA), and 3,4-Methylenedioxymphetamine (MDMA) should be included in Schedule I of that Convention; that the four substances Cathine, Fenetylline, Levamphedamine, and Levomethamphetamine should be included in Schedule II of that Convention; and that the six substances N-Ethylamphetamine, Fencamfamin, Fenproporex, Mefenorex, Propylhexedrine and Pyrovalerone should be included in Schedule IV of that Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the texts of those seventeen notifications as Annex I to the present note.

The Director-General of the World Health Organization, in connection with the notifications, has also submitted the report of the Twenty-second WHO Expert Committee on Drug Dependence which reviewed these substances, *inter alia*, for possible international control. Excerpts from that report, concerning the seventeen substances recommended for scheduling, are hereby transmitted as Annex II. The latter text is currently available in English only, pending receipt of the official translation from the World Health Organization.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notifications from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session. Any action or decision taken by the Commission with respect to these notifications, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

"The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible scheduling of the seventeen substances indicated in Annex I could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 25 October 1985.

18 July 1985

Annex I

Notes Dated 20 May 1985 Addressed to the Secretary-General by the Director-General of the World Health Organization

Cathine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances,

1971, reviewed information pertaining to *d*-threo-2-amino-1-hydroxy-1-phenyl-propane and referred to as cathine.

Cathine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that cathine be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Cathinone

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to (-)- α -aminopropiophenone and referred to as cathinone.

Cathinone meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that cathinone be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Dimethoxyamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *di*-2,5-dimethoxy- α -methylphenylethylamine and referred to as 2,5-dimethoxyamphetamine or DMA.

DMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that DMA be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Ethylamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-N-ethyl- α -methyl-phenylethylamine and referred to as N-Ethylamphetamine.

N-Ethylamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that N-Ethylamphetamine be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Fencamfamin

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-N-ethyl-3-phenylbicyclo[2.2.1]heptan-2-amine and referred to as fencamfamin.

Fencamfamin meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that fencamfamin be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Fenetylline

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3,7-dihydro-1,3-dimethyl-7-[(2-[(1-methyl-2-phenylethyl)amino]-ethyl)-1H-purine-2,6-dione] and referred to as fenetylline.

Fenetylline meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that fenetylline be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Fenproporex

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl*-3-[(α -methylphenethyl)amino]-propionitrile and referred to as fenproporex.

Fenproporex meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that fenproporex be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Levamphetamine

The Director-General of the World Health Organization presents his compliments to the

Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *1-alpha-methylphenethylamine* and referred to as *levamphetamine*.

Levamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *levamphetamine* be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Levomethamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *1-alpha-dimethylphenethylamine* and referred to as *levomethamphetamine*.

Levomethamphetamine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *levomethamphetamine* be added to Schedule II of the Convention on Psychotropic Substances, 1971.

Mefenorex

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-N-(3-chloropropyl)-alpha-methylphenethylamine* and referred to as *mefenorex*.

Mefenorex meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *mefenorex* be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Para-methoxyamphetamine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *4-methoxy-alpha-methylphenylethylamine* and

referred to as *para-methoxyamphetamine (PMA)*.

PMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *PMA* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Propylhexedrine

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-1-cyclohexyl-2-methylaminopropane* and referred to as *propylhexedrine*.

Propylhexedrine meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *propylhexedrine* be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Pyrovalerone

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone* and referred to as *pyrovalerone*.

Pyrovalerone meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *pyrovalerone* be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Trimethoxyamphetamine (TMA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-3,4,5-trimethoxy-alpha-methylphenylethylamine* and referred to as *3,4,5-trimethoxyamphetamine* or *3,4,5-TMA*.

3,4,5-TMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *3,4,5-TMA* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

2,5-Dimethoxy-4-ethylamphetamine (DOET)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-2,5-dimethoxy-4-ethyl-alpha-methylphenylethylamine* and referred to as *2,5-dimethoxy-4-ethylamphetamine* or *DOET*.

DOET meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *DOET* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

5-Methoxy-3,4-methylenedioxymphetamine (MDMA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-5-methoxy-3,4-methylenedioxy-alpha-methylphenylethylamine* and referred to as *5-Methoxy-3,4-methylenedioxymphetamine* or *MDMA*.

MDMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *MDMA* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

3,4-Methylenedioxymethamphetamine (MDMA)

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to *dl-3,4-methylenedioxy-N,alpha-dimethylphenylethylamine* and referred to as *3,4-methylenedioxymethamphetamine* or *MDMA*.

MDMA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *MDMA* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Annex II

Excerpt from the Report of the Twenty-second WHO Expert Committee on Drug Dependence

[Note by the Secretariat.—The following excerpts from the Report of the Twenty-second Expert Committee on Drug Dependence, which met at the World Health Organization in Geneva from 22–26 April 1985, concern only with 17 substances which have been recommended by WHO for scheduling. Two of the substances reviewed by the Committee, 3,4-Methylenedioxyamphetamine (MDA) and 2,5-Dimethoxy-4-bromoamphetamine (DOB) had already been placed in Schedule I of the Convention on Psychotropic Substances by decision of the Commission on Narcotic Drugs and the Committee was of the opinion that no further action was required.]

1. Cathine

It was noted that cathine is one of the active principals of the abused plant material *Catha edulis* (khat). Chemically, it is *d-threo*-2-amino-1-hydroxy-1-phenylpropane, and it is the single optical isomer of a structure which contains two asymmetric centres. Because of this, the compound can exist as two racemates (*threo* and *erythro*) and each as two pairs of isomers (+ and -). The *erythro* racemate is commonly known as phenylpropanolamine and is widely used medically as a nasal decongestant. Phenylpropanolamine has only a low level of central stimulant activity, is not self-administered in animals and is not widely abused by man despite its widespread medical use.

Cathine has central stimulatory activity similar to amphetamine but is about 7–10 times less potent. Its toxicity in animals and man resembles amphetamine with a lesser incident of stereotypy. Animal data indicates that cathine is discriminated as being amphetamine-like.

Cathine is marketed as an anorectic in a wide variety of pharmaceutical forms and preparations and is widely distributed in the world. There are some reports of human abuse of anorectics containing cathine from a number of countries. Numerous reports of small seizures of the drug have been made.

On the basis of the data outlined above it was the consensus of the Committee that cathine met the criteria in Article 2 para 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule II.

The Committee also noted that there was little or no data available on the racemate and (-)-isomer of cathine. If these forms follow the example of amphetamine and cathinone they will have similar properties to cathine. Further study of the abuse potential of the racemate and (-)-isomer was suggested.

2. Cathinone

Cathinone is the major psychoactive component of the khat plant (*Catha edulis*). Chemically it is (-)-alpha-aminopropiophenone. The racemate and (+)-isomer have also been prepared and studied pharmacologically to a small extent.

Cathinone is a central nervous system stimulant which shares most of the pharmacological properties of amphetamine with about half its potency. In addition, there is cross tolerance to amphetamine as an anorectic. The toxicology of cathinone is also similar to that of amphetamine. Cathinone is well absorbed orally and rapidly metabolized. A main excretion product is (-)-nor-ephedrine.

The dependence potential of cathinone has been studied extensively in animals. The drug is discriminated as amphetamine-like and is readily self-administered by rhesus monkeys. The racemate shares these properties. Knowledge of the human pharmacology of cathinone comes only from the experience with khat, which has widely been reported to be a public health problem of great magnitude in certain areas of the world where it is available.

There is no known medical use of cathinone and there is no evidence of illicit traffic with the substance.

On the basis of the data outlined above, it was the consensus of the Committee that cathinone met the criteria for control in Article 2 para. 4 for control under the Convention on Psychotropic Substances. Since cathinone has no medical use it was recommended that it be placed in Schedule I.

3. 2,5-Dimethoxyamphetamine

This substance, commonly known as DMA, is a racemic mixture which has a pharmacological profile similar to mescaline at low doses and amphetamine at high doses. It apparently produces hallucinations in man. Drug discrimination studies indicate that it has common effects with hallucinogens. The substance has no known medical use, but is used in the photographic industry. There are a number of reports of illicit traffic of the substance.

On the basis of the data outlined above, it was the consensus of the Committee that 2,5-dimethoxyamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no known clinical use, the Committee recommended that it be placed in Schedule I of the Convention.

4. N-Ethylamphetamine

This substance is a racemic mixture whose pharmacological profile resembles that of amphetamine. It is a central nervous system stimulant which is self-administered by the rhesus monkey. No data were available on the clinical abuse liability, the nature and magnitude of public health and social problems, or epidemiology of its use and abuse. The substance is legislatively controlled nationally by several countries and there are few reports on its therapeutic usefulness. Products containing the substance are marketed in several countries and there have been only a small number of reports of the drug appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that N-Ethylamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule IV.

5. Fencamfamin

Chemically, fencamfamin is N-ethyl-3-phenylbicyclo[2.2.1]heptan-2-amine. Pharmacologically, fencamfamin is a central nervous system stimulant which resembles amphetamine in most aspects. The toxicology of fencamfamin also resembles an amphetamine but it does not produce aggregate toxicity. Fencamfamin is not metabolized to amphetamine and has a half-life of about 18 hours.

Fencamfamin is self-administered in both beagle dogs and monkeys and shows the typical pattern of a central stimulant reinforcer. There was no evidence of clinical abuse liability or serious public health and social problems but there is some social abuse by students in some countries.

Fencamfamin has been used clinically as an "energizing" drug since 1962 and is marketed in 32 countries and prescription controlled in many of them. There were a few examples of fencamfamin appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that fencamfamin met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances, and should be placed in Schedule IV.

6. Fenetylline

Chemically, fenetylline is a racemic ethyltheophylline derivative of amphetamine. Pharmacologically, it partly resembles amphetamine; however, there are a number of qualitative differences. The pattern of toxicity in animals is similar in amphetamine. There is a low incidence of clinical side effects. The drug is well absorbed with an elimination half-life of about 1.3 hours. It is converted to amphetamine to some extent and to a number of other metabolites which are slowly excreted.

Fenetylline is self-administered by rhesus monkeys but not to the same degree as amphetamine. In the most recent studies only two out five animals self-administered the drug at rates above saline levels. In drug discrimination studies in a number of species, fenetylline was discriminated as amphetamine in a portion of the subjects. There is limited data on clinical dependence potential but widespread and increasing abuse has been documented in the Federal Republic of Germany with additional reports from Mexico, Sweden and Middle East. Substantial illicit traffic has occurred in several countries and it is under legislative control in many countries.

The drug is used therapeutically mainly in paediatric and geriatric practice. It is marketed in a large number of countries. In recent years there has been an increasing number of reports of fenetylline entering illicit traffic. Interpol has reported seizure data from 13 countries from 1981 to 1983 totalling approximately 20 million dosage units. Particular concern has been expressed by a number of countries from the Near and Middle East.

On the basis of the data outlined above, it was the consensus of the Committee that fenetylline met the criteria of Article 2, para. 4 for control under the Convention on

Psychotropic Substances, and it should be placed in Schedule II.

7. Fenproporex

Fenproporex is the racemic N-cyanoethyl analogue of amphetamine. Pharmacologically, the compound appears to be amphetamine-like but little published data are available. No animal toxicology was available but it has been reported to alter colour vision in man at therapeutic doses. Fenproporex has been reported to be metabolized to amphetamine in man. No data was available concerning the preclinical or clinical dependence potential of the drug. There are a few reports of abuse from Chile and Mexico and the drug is under control in several countries.

Fenproporex is used therapeutically as an appetite suppressant and marketed widely. There are a number of reports of the drug appearing in illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that fenproporex met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule IV.

8. Levamphetamine

Levamphetamine is the *l*-isomer of amphetamine. Its pharmacological profile is very similar to that of *d*-amphetamine but it is a quarter to a third as potent. No toxicological or pharmacokinetic data was available.

Levamphetamine is readily self-administered by rhesus monkeys, rats and dogs and differs only from *d*-amphetamine by being less potent. No information was available concerning clinical abuse liability, the nature of the public health and social problems, or the epidemiology of drug use and abuse. The drug is under control in a number of countries. Levamphetamine is available for medical use at least in the United Kingdom. No data was available concerning production. There have been some reports of illicit traffic with the drug.

On the basis of the data outlined above, it was the consensus of the Committee that levamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Because of its great chemical and pharmacological similarity to *d*-amphetamine the Committee recommended that it be placed in Schedule II.

9. Levomethamphetamine

Levomethamphetamine is opposite optical isomer of *d*-methamphetamine. It is a central nervous system stimulant whose pharmacological profile is very similar to the *d*-isomer but less potent. No toxicological or pharmacokinetic data was available.

Levomethamphetamine is self-administered by rats. There is no data on clinical abuse liability, the nature and magnitude of public health and social problems or the epidemiology of use and abuse. The drug is under control in several countries. It is marketed as an exempt preparation in the USA as a nasal decongestant in an inhaler. There are reports of illicit manufacture and traffic in the drug.

On the basis of the data outlined above, it was the consensus of the Committee that

levomethamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. On the basis of its strong chemical and pharmacological resemblance to *d*-methamphetamine the Committee recommended that the drug be placed in Schedule II.

10. Mefenorex

Chemically, mefenorex is the racemic N-chloropropyl analogue of amphetamine. Mefenorex is an amphetamine-like stimulant with anorectic activity. It appears to have less effect on the cardiovascular system and does not produce stereotypic movements in the rat. The acute cause of death in rats is respiratory paralysis. There is no enhancement of lethality in grouped animals such as occurs with *d*-amphetamine. Typical sympathomimetic side effects are seen in man. In man the drug is excreted unchanged and as various hydroxylated metabolites.

Mefenorex is self-administered to some degree (two out of five) by the rhesus monkey and has discriminative stimulus effects in common with amphetamine in both monkeys and pigeons. The drug was less potent than amphetamine in both procedures. There is no data on clinical abuse liability, no reported public health and social problems and no information related to abuse epidemiology. The drug is under some form of control in many countries.

Mefenorex is used as an anorectic agent in the treatment of obesity and is widely sold worldwide. Some illicit traffic has been reported.

On the basis of the data outlined above, it was the consensus of the Committee that mefenorex met the criteria of Article 2, para. 4 for control of mefenorex under the Convention on Psychotropic Substances and should be placed in Schedule IV.

11. Paramethoxyamphetamine (PMA)

PMA is a racemic mixture whose pharmacological profile is predominantly amphetamine-like. It also shows some pharmacological activity resembling LSD (e.g., visual tracking in monkeys and dogs). In human subjective reports PMA was estimated as five times more potent as a psychotomimetic than mescaline.

Regarding its dependence potential, in different studies in rodents, its discriminative effect was amphetamine-like or somewhat resembling LSD. PMA was not self-administered in baboons. Data on clinical abuse liabilities from human studies relevant to the dependence potential of this substances are not available.

Serious adverse reactions and fatal toxicity appeared geographically isolated but disconcerting. Signs of intoxication include those observed with amphetamine and also with mescaline.

Data on governmental seizures indicated only isolated cases of illicit traffic in PMA.

On the basis of the data outlined above, it was the consensus of the Committee that paramethoxyamphetamine met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no therapeutic use, the Committee recommended that

paramethoxyamphetamine be placed in Schedule I of the Convention.

12. Propylhexedrine

Chemically, propylhexedrine is racemic 1-cyclohexyl-2-methyl-aminopropane. Animal pharmacology studies indicate that propylhexedrine has some stimulant actions in common with amphetamine, such as increased locomotor activity and pressor effects. Regarding dependence potential, no data are available from animal studies but human investigative reports indicate that propylhexedrine is capable of imitating at least some of the subjective effects of amphetamine, such as restlessness.

Toxicological data report adverse reactions in man following both oral abuse of propylhexedrine inhalers and certain cases of intravenous abuse reported from 1974 to 1982. Published reports describe severe acute toxic effects from abuse of the substance. In addition, propylhexedrine abuse has been reported at a low frequency in epidemiological observations based upon several abuse reporting systems and these observations have been spread over a period of 30 years. It also appears important that propylhexedrine has not been accepted apparently by abusers when provided as substitute for amphetamine in inhalant form.

Propylhexedrine is a sympathomimetic agent which has been used without a prescription in an inhalant form for nasal decongestion. Its hydrochloride is available in an oral form and given daily in divided doses as an anorectic agent in the treatment of obesity.

On the basis of the data outlined above, it was the consensus of the Committee that propylhexedrine met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances and should be placed in Schedule IV.

13. Pyrovalerone

Chemically, pyrovalerone is 1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone. Pharmacologically, it is a potent inhibitor of norepinephrine uptake. The Committee was unable to find useful data on the pharmacological profile of this substances or animal studies relevant to its dependence potential. It has been in medical use for asthma, reactive depression, and as a stimulant for the relief of drug induced lethargy. A pyrovalerone preparation was abused in France by intravenous injection and was withdrawn from the market in both France and Switzerland. Reports are available which appear to indicate that, by the intravenous route, the drug produces amphetamine-like central stimulation and psychological dependence. It remains available in Luxembourg but the manufacturer supplied no information. Thus, despite systematic effort, virtually no relevant information from the manufacturer was available to the Committee.

On the basis of the data outlined above, it was the consensus of the Committee that pyrovalerone met the criteria of Article 2, para. 4 of the Convention and should be placed in Schedule IV.

14. 3,4,5-Trimethoxyamphetamine

3,4,5-Trimethoxyamphetamine (3,4,5-TMA) is a racemate which has a pharmacological profile similar to LSD with some amphetamine-like activity in the spinal dog. It is cross tolerant with LSD. No toxicological data are available.

In rodents 3,4,5-TMA produces discriminative effects similar to DOM, another known hallucinogen of this series. No clinical abuse data are available and the nature and magnitude of public health and social problems is unknown. No information is available on the epidemiology of its use and abuse. The substance is under national control in several countries. There is no known therapeutic use and thus no licit production. Seizures of the drug and the finding of a number of clandestine laboratories indicate the substance is in illicit traffic in Canada and the United States.

On the basis of the data outlined above, it was the consensus of the Committee that 3,4,5-trimethoxyamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no known clinical use, the Committee recommended that it be placed in Schedule I.

15. 2,5-Dimethoxy-4-ethylamphetamine

This substance, commonly known as DOET, has been reported to be hallucinogenic in man. DOET was discriminated as hallucinogen-like in the rat but there is some evidence that the substance may have a different profile of pharmacological action from that of the typical hallucinogens of this series. No toxicological or pharmacokinetic data is available. DOET is not self-administered by baboons. No data are available on clinical abuse liability on the nature or magnitude of public health or social problems or on the epidemiology of its use or abuse. The drug is under national control in four countries. There is no known therapeutic use and no data on production. There is only one minor report of illicit traffic.

On the basis of the data outlined above, it was the consensus of the Committee that 2,5-dimethoxy-4-ethylamphetamine met the criteria in Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since the substance has no therapeutic use, the Committee recommends it to be placed in Schedule I.

16. 5-Methoxy-3,4-methylenedioxymphetamine

This substance is commonly known as MDMA. In the spinal dog MDMA has a pharmacological profile which resembles both LSD and amphetamine but has other properties which are not shared by either drug. There are no data on the toxicology, pharmacokinetics, dependence potential, nature and magnitude of public health and social problems or epidemiology of its use and abuse. The substance is under national control in five countries. It has no known therapeutic use and no information is available concerning its production. Minor encounters with this compound in illicit traffic have been reported by the United States.

Request for Comments

As provided by section 201(d)(2)(B) of the CSA [21 U.S.C. 811(d)(2)(B)], FDA, at the direction of the Assistant Secretary for Health, invites interested persons to submit comments on the WHO recommendations. The comments received will be considered by FDA (in consultation with the National Institute on Drug Abuse) on behalf of DHHS in its evaluation of the recommendations. DHHS will then recommend to the Secretary of State the position which the United States should take when voting on the scheduling proposals at the CND meeting in February 1986.

Open Public Meeting

FDA, on behalf of DHHS, has concluded that it is in the public interest to hold an open public meeting for the purpose of allowing interested persons to present their views on the proposed CND actions discussed above (see 21 CFR 10.65). The meeting will be informal and is intended only for the presentation of views on the proposed actions. Thus, although the FDA official(s) conducting the meeting may direct questions to those presenting views for purposes of clarification, no participant may interrupt the presentation of another participant for any reason without prior approval from the presiding officer. Any interested person may attend and present his or her views provided that FDA receives written notice of intent to participate at least 3 days before the meeting. The open public meeting will be held on October 10, 1985, at 8:30 a.m., in Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Written notice of intent to participate should be sent to L. David Wolfson, Rm. 11-46 (address above).

Interested persons may, on or before October 7, 1985, submit to the Dockets Management Branch (address above) written comments regarding this notice. This short comment period is necessary to assure that DHHS may make its required evaluations and recommendations. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 1985.

Robert L. Spencer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21372 Filed 9-4-85 11:11 am]

BILLING CODE 4160-01-M

Public Health Service**National Toxicology Program; Meeting**

A conference on "Managing Conduct and Data Quality of Toxicology Studies" will be held November 18, 19 and 20, 1985 at the Mission Valley Conference and Expo Center, Raleigh, North Carolina.

This conference, sponsored jointly by the National Toxicology Program/National Institute of Environmental Health Sciences and Industry (American Industrial Health Council, American Petroleum Institute, Chemical Manufacturers Association, National Agricultural Chemical Association), is intended to provide opportunities for the presentation of views and discussion of concerns related to the importance of the quality of data generated from toxicology studies. The conference objectives are to:

- Review and exchange current concepts and strategies to improve the quality of toxicological studies.
- Present and discuss Quality Assurance (QA) programs utilized by government and industry.
- Provide a forum for the exchange of ideas between government and industry to strengthen a mutual commitment to quality.
- Publish conference proceedings.

Presentation will be made by leaders in various disciplines which contribute to the quality of toxicology studies. The interaction needed between management and scientists to maintain standards of quality in the conduct of toxicology programs will be the focus of this conference.

There will be no registration fee, but early reservations are recommended due to space limitation. Registration deadline is October 15th.

To receive information for the conference including housing, reservations, and agenda, please contact: Ms Alice S. Glover, Corporate Travel International/NC, P.O. Box 30607, Raleigh, NC 27608, 1-800-672-8537 (within NC), 1-800-344-9798 (outside NC).

Dated: August 29, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-21268 Filed 9-5-85; 8:45 am]

BILLING CODE 4140-01-M

Privacy Act of 1974; Revision of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an altered Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a major alteration to the system of records, 09-30-0022, "National Institute on Drug Abuse, Addiction Research Center, Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA," for the following reasons: (1) To computerize, (2) to expand the category of individuals, and (3) to expand the "Purpose" section to permit the Addiction Research Center to collect and maintain an automated data base for research purposes in addition to the current purpose of evaluating and monitoring subject's health during participation in a research project. We are also proposing to add a new routine use.

DATE: PHS invites interested parties to submit comments on the proposed new routine use on or before October 3, 1985. PHS has sent a Report of An Altered System to the Congress and to the Office of Management and Budget (OMB) on August 29, 1985. PHS will adopt the routine use without further notice 30 days after the date of publication, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Extramural Policy and Project Review Branch, Office of Science, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10-42, Rockville, Maryland 20857.

Comments received will be available for inspection at the same address, from 9:00 a.m. to 4:00 p.m., Monday through Thursday.

FOR FURTHER INFORMATION CONTACT: Chief, Research Support Branch, Addiction Research Center, National Institute on Drug Abuse, Francis Scott Key Medical Center, Building C, 4940 Eastern Avenue, Baltimore, Maryland 21224. Telephone: (301) 955-7570. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Addiction Research Center (ARC) proposes a major alteration of the system of records, "National Institute on Drug Abuse Addiction Research Center, Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA," 09-30-0022, (1) to computerize the system, (2) to expand the category of individuals to include adolescents, (3) to expand the "Purpose" section to permit ARC to collect and maintain an automated data base for research purposes in addition to the current purpose of evaluating and monitoring subject's health during participating in a research project.

This system of records contains the administrative, medical and research records on each volunteer who has participated as a subject in any research project at ARC since its move to Baltimore, Maryland, during February 1980. Although the specific scientific methodologies vary from research project to research project, the overall goal of each project is to conduct research on the causes, diagnosis, prevention, and treatment of drug addiction and drug abuse; on the nature of the addictive process; and on the potential abuse liability of new drugs. Some projects will use statistical information from other ADAMHA programs.

The automation of the records will aid in protecting the individual as well as enhancing the gathering and analysis of the research data. Both detailed medical and research information must be maintained on each research subject as well as administrative information; and, as the number of records has increased, it has become increasingly difficult to ensure the individual's well-being using a manual system. The records on subjects who participated in research projects prior to the move will not be computerized at this time, but are being retained for research purposes. The old prisoner records have been retired to a Federal Records Center (FRC) and will not be computerized.

We are also proposing to expand the category of individuals to include adolescents (ages 13-18) who are identified by a health care provider as having potential delinquent behavior problems which could include or be associated with drug and/or drug and alcohol problems. The specific methodologies will vary with each individual project. However, any research project with adolescents, as with the other research projects, will be compatible with the goals of ARC, NIDA and this system notice. All Federal, State, and local laws and regulations applicable to research with adolescents will be strictly followed.

We are also proposing to add a contractor routine use in order to contract with an outside organization for the recruitment and screening of the individuals who volunteer as research subjects. This routine use is necessary because ARC lacks the resources and manpower to perform these procedures. Access by the contractor is limited to the screening and recruitment procedures. Records on individuals who do not qualify for a particular project are retained for one year and then destroyed by the contractor by shredding. The contractor will be required to maintain Privacy Act

safeguards with respect to all records. We are not making any changes to the litigation routine use already listed for this system.

We are revising the "Safeguards" section to include safeguards for the automated data. The records in this system will be maintained in a secure manner compatible with their content and use. The contractor will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulation. The System Manager, and/or Principal Investigator will control access to the data. The specific safeguards are explained in the accompanying system notice.

In addition, because much of the data collected is sensitive and confidential, special safeguards have been established. A certificate of confidentiality is issued under Protection of Identity—Research Subjects Regulations (42 CFR Part 2a) for each research project, as described in the system notice. Also, these records are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56a), which state:

Where the content of patient records has been disclosed pursuant to [these regulations] for the purpose of conducting scientific research . . . information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.

The safeguards implemented have been developed in accordance with chapter 45-13, "Safeguarding Records Contained in System of Records," or the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13; and Chapter 6-05, "Risk Management, under Part 6, of the Department's ADP Systems Security Manual.

In addition to the revisions outlined above, we are also making minor editorial changes throughout the system notice.

The system notice was published most recently in the Federal Register, November 29, 1983 (Vol. 48 No. 230, pp. 53816-53817). We are republishing below the system notice in its entirety to incorporate the proposed changes. It is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the changes become effective.

Dated: August 30, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health
Operations and Director, Office of
Management.

Notice of an Altered System of Records

09-30-0022

SYSTEM NAME:

National Institute on Drug Abuse,
Addiction Research Center, Federal
Prisoner and Non-Prisoner Patient Files,
HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NIDA Addiction Research Center,
Francis Scott Key Medical Center,
Building C, 4940 Eastern Avenue,
Baltimore, MD 21224; Federal Records
Center, 1557 St. Joseph Avenue, East
Point, Georgia 30344; Washington
National Records Center, 4205 Suitland
Road, Washington, D.C. 20409;
Bionetics, Inc., Francis Scott Key
Medical Center, Building C, 4940 Eastern
Avenue, Baltimore, MD 21224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers, both adult males (from
1968 to present) and adolescents (ages
13-18, beginning in 1985) involved in
clinical research projects conducted at
the Addiction Research Center (ARC).
This system also includes records on
adult Federal prisoners involved in
research projects at ARC when located
at Lexington, Kentucky, from 1968-1976,
and some records from system 09-30-
0020 to be used for statistical research
only.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records involved are
administrative, medical and research
records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act Section
301(a) (42 U.S.C. 241(a); Sections 341(a)
and 344(d) (42 U.S.C. 257(a) and 260(d);
Sections 503 and 515 (42 U.S.C. 290aa-2
and 290cc). These sections authorize the
conduct of research in all areas of drug
abuse.

PURPOSE(S):

(1) To collect and maintain a data
base for research activities at ARC, and
(2) to enable Federal drug abuse
researchers to evaluate and monitor the
subjects' health during participation in a
research project. The areas of research
include, but are not limited to,
biomedical, clinical, behavioral,

pharmacological, psychiatric,
psychosocial, epidemiological,
etiological, statistical, treatment and
prevention of narcotic addiction and
drug abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Alcohol Drug Abuse and Mental
Health Administration (ADAMHA) uses
a contractor solely to recruit volunteers
and to screen these individuals for their
acceptability to participate in specific
research projects, and limits the
contractor's access to the records to
these procedures. The contractor will
disclose records from this system only
to ADAMHA and is required to
maintain Privacy Act safeguards with
respect to such records.

2. In the event of litigation where the
defendant is (a) the Department, any
component of the Department, or any
employee of the Department in his or
her official capacity; (b) the United
States where the Department determines
that the claim, if successful, is likely to
directly affect the operations of the
Department of any of its components; or
(c) any Department employee in his or
her individual capacity where the
Justice Department has agreed to
represent such employee, the
Department may disclose such records
as it deems desirable or necessary to the
Department of Justice to enable that
Department to present an effective
defense, provided such disclosure is
compatible with the purpose for which
the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders or
on computer disks or magnetic tapes.

RETRIEVABILITY:

Administrative and medical records
are indexed and retrieved by the
subject's name. Research records are
indexed and retrieved by the subject's
name and an identification code.

SAFEGUARDS:

1. Authorized Users: Only authorized
ARC staff (Principal Investigator and
his/her research team) are allowed
access to these files. The contractor
staff has access to the files during the
recruitment/screening process.

2. Physical Safeguards: Files and file
rooms are locked after business hours.
Building has controlled entry (sign in
and out) at all times with a 24-hour
guard/television surveillance system.
The computer terminals are in a further
secured area.

3. Procedural Safeguards: All users of
personal information in connection with
the performance of their jobs protect
information from unauthorized
personnel. Access codes to the research
records are available only to the
Principal investigator and his/her
research team. Access to the records is
strictly limited to those staff members
trained in accordance with the Privacy
Act. The contractor staff members are
required to secure the information in
accordance with the Privacy Act. ARC
Project Officer and contracting officials
will monitor contractor compliance.

4. Implementation Procedures: DHHS
Chapter 45-13 and supplementary
Chapter PHS.hf 45-13 of the General
Administration Manual; and Chapter 6-
05, "Risk Management," under Part 6 in
the Department's ADP System Security
Manual.

In addition, because much of the data
collected in these research projects are
sensitive and confidential, special
safeguards have been established.
Certificates of confidentiality have been
issued under Protection of Identity—
Research Subjects Regulations (42 CFR
Part 2a) to those projects initiated since
February 1980. This authorization
enables persons engaged in research on
mental health, including research on the
use and effect of psychoactive drugs, to
protect the privacy of research subjects
by withholding their names or other
identifying characteristics from all
persons not connected with the conduct
of the research. Persons so authorized
may not be compelled in any Federal,
State, or local civil, criminal,
administrative, legislative, or other
proceeding to identify such individuals.
In addition, these records are subject to
42 CFR Part 2, the Confidentiality of
Alcohol and Drug Abuse Patient
Records Regulations (42 CFR 2.56),
which state: "Where the content of
patient records has been disclosed
pursuant to these regulations for the
purpose of conducting scientific
research . . . information contained
therein which would directly or
indirectly identify any patient may not
be disclosed by the recipient thereof
either voluntarily or in response to any
legal process whether Federal or State."

RETENTION AND DISPOSAL:

Records will be disposed of in
accordance with the ADAMHA Records
Control Schedule, i.e., when the records
are 10 years old or no longer required
for administrative or research purposes.
The records on individuals who do not
qualify for a specific research project
are kept for one year by the contractor
who then destroys them by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Research Support Branch,
NIDA Addiction Research Center,
Francis Scott Key Medical Center,
Building C, 4940 Eastern Avenue,
Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide a notarized signature as proof of identity. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The individual; observations and medical recordings (such as blood pressure, dosage of compound administered, etc.) made by the Principal Investigator and his/her research team; system of records number 09-30-0020; drug treatment programs; Bureau of Prisons; case workers; psychiatrists; research laboratories; and pharmacies and hospitals. Many of these records are

confidential and privileged communication is guaranteed under Section 344(d) of the PHS Act.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.
[FR Doc. 85-21317 Filed 9-5-85; 8:45 am]
BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of Administration**

[Docket No. N-85-1548]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar

with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing—Comparative Analysis of Utility Costs
Office: Public and Indian Housing
Form No. HUD-51994A, 51994B, 51994C, and 51994D

Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 1,562
Status: Extension
Contact: Charles H. James, HUD, (202) 755-8460 Robert Fishman, OMB, (202) 395-7316.

Proposal: Report on Property/Casualty Claim Experience and Premiums Paid
Office: Public and Indian Housing
Form No. HUD-5244
Frequency of submission: Single-Time
Affected public: Non-Profit Institutions
Estimated burden hours: 1,628
Status: New
Contact: Ralph Lecky, HUD, (202) 755-8145; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 22, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-21250 Filed 9-5-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****National Strategic Materials and Minerals Program Advisory Committee; Meeting**

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet Sunday, September 22, 1985. The meeting will convene from 2:00 p.m. to 5:00 p.m. in the California East Room at

the Westin St. Francis Hotel in San Francisco, California.

It will be open to the public.

The proposed agenda is:

2:00-2:30: Report by the Chairman.
Completion of pending Committee business.

2:30-4:00: Reports from working groups; recommendations for consideration by the Committee; discussion of future agenda.

4:00-5:00: Public Comment: statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues.

Prospective witnesses are requested to notify the Committee contact (see below) of their intention to appear. Written statements for the record may be submitted through September 30, 1985.

FOR FURTHER INFORMATION CONTACT:
Gully Walter, Department of the Interior, Washington, D.C., Room 6650, (202) 343-2136.

Dated: September 3, 1985.

Gully Walter,

Acting Executive Director,

[FR Doc. 85-21310 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

August 23, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Northern Cherokee Tribe of Indians, c/o Mrs. Beverly A. Baker, P.O. Box 1221, Columbia, Missouri 65205, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 26, 1985. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information

submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Branch of Acknowledgment and Research, Code 440B, Bureau of Indian Affairs, Interior South Building, Room 32, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs,

[FR Doc. 85-21332 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[N-37930]

Nevada; Termination of Airport Lease Application Involving Lands in Nye County

August 23, 1985.

Notice is hereby given that airport lease application N-37930, involving the following described lands, has been withdrawn:

Mount Diablo Meridian, Nevada

T. 12 N., R. 46 E.,

Secs. 11, 14, 15 and 22 (within).

The segregative effect of the airport lease application is hereby removed upon publication of this notice in the Federal Register.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85-21347 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-HC-M

[CA 10388-A]

Exchange of Public and Private Lands in San Diego and Tehama Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document, and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire the non-Federal land for use in implementing the Sacramento River/Payne Creek/Table Mountain composite. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with officials from Tehama and San Diego counties including a composite review by the State of California Resources Agency. The public interest was well served by making the exchange. The

land acquired in this exchange will be opened to the operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

EFFECTIVE DATE: June 26, 1985.

FOR FURTHER INFORMATION CONTACT:
Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to The Trust for Public Land on June 26, 1985, for the following described lands under the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Mount Diablo Meridian, California

T. 26 N., R. 1 W.,

Sec. 26, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$.

San Bernardino Meridian, California

T. 13 S., R. 1 E.,

Sec. 6, N $\frac{1}{2}$ SE $\frac{1}{4}$.

Comprising 240.00 acres of public land.

In exchange for these lands, the United States acquired the following described land from The Trust for Public Land:

Mount Diablo Meridian, California

T. 28 N., R. 3 W.,

Sec. 22, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Comprising 90.00 acres of non-Federal land.

The values of the public land and non-Federal land were equalized by a cash payment to the United States in the amount of \$18,719.70.

At 10:00 a.m. on October 8, 1985, the non-Federal land described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 8, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10:00 a.m. on October 8, 1985, the non-Federal land described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: August 29, 1985.

Sharon N. Janis,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 85-21346 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 9612]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

A petition for reinstatement of oil and gas lease CA 9612, embracing lands in the State of California, County of Kern, was timely filed and accompanied by all the required rentals and royalties accruing from February 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at the rate of \$5.00 per acre or fraction thereof and 16% percent respectively. The lessee has paid the required \$500.00 administrative fee and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

The lessee having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Minerals Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: August 28, 1985.

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-21351 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-40-M

[C-40262]

Realty Action; Colorado; Exchange of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial No. C-40262, Determination of land suitable for exchange under the authority of sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Approximately 120 acres of public land under the jurisdiction of the Bureau of Land Management have been determined suitable for exchange. The determination of suitability has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Mr. Mark Lee. In the proposal, Mr. Lee has offered to exchange approximately 40 acres of private land. The exchange proposal has been made to facilitate the consolidation of land holdings. The consolidation would increase managerial efficiency and provide

public access to natural resources on public land being managed by the Bureau.

The values of the land to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values. Any expected changes in selected public land acreage would occur in selected public land located in section 33.

Description of Land To Be Considered for Exchange in Garfield County, Colorado*Offered Private Land*

6th Principal Meridian, Colorado

T. 5 S., R. 89 W.,
Sec. 21: NW 1/4 SW 1/4.
Containing 40 acres

Selected Public Land

6th Principal Meridian, Colorado

T. 5 S., R. 89 W.,
Sec. 27: NW 1/4 SW 1/4.
Sec. 28: Lot 3;
Sec. 33: NE 1/4 NE 1/4.
Containing 119.17 acres.

Terms and Conditions: The following reservations for existing uses and users would be made in a patent issued for public land.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of all mineral deposits in the land.

3. The Reservation of Oil and Gas lease, C-31701.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction,

Colorado 81501. Objections will be reviewed by the State director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

Dated: August 27, 1985.

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 85-21345 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-JB-M

Colorado; Grand Junction District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grand Junction District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Grand Junction District Advisory Council will be held on Wednesday, October 9, 1985, and Thursday, October 10, 1985.

SUPPLEMENTARY INFORMATION: The meeting on Wednesday, October 9 will be held at the Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, CO 81601; from 2-5 p.m. A public comment period is scheduled for 4 p.m.

On Thursday, October 10, beginning at 8 a.m., the Council will tour land exchange parcels, recreation sites along the upper Colorado River, and a prescribed burn area and wildlife brush-beating project north of Dotsero. These sites were addressed in the Glenwood Springs Resource Management Plan and are now involved in implementation.

The full-day field trip is open to the public; however, transportation and food will only be provided for Council members.

Dated: August 30, 1985.

Wright Sheldon,

District Manager, Grand Junction District.

[FR Doc. 85-21348 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-JB-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

August 23, 1985.

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 16, 1985.

Mount Diablo Meridian, Nevada
T. 35 N., R. 69 E.

2. The land within the above township is about 4,400 to 5,200 ft. above sea level and is level to rolling. The soil is sandy clay loam at the lower elevations and rocky in the higher elevations. Vegetation consists of scattered sagebrush, native grass and greasewood.

A gravel road crosses from SSW. to NNE., entering in section 31 and leaving in section 5.

Pilot Creek enters the township in section 5 and leaves in section 36 and drains S. to SE.

Numerous trail roads are located within the township.

The remains of the old Cummings ranch are located in the NW. cor. of sec. 10.

Principal users of the area are ranchers.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on September 16, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

4. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 22 N., R. 18 E. May 7, 1985. Dependent Resurvey.
T. 23 S., R. 63 E. May 7, 1985. Supplemental Plat.
T. 33 N., R. 70 E. May 7, 1985. Supplemental Plat.
T. 36 N., R. 69 E. July 7, 1985. Dependent Resurvey.
T. 37 N., R. 69 E. July 15, 1985. Dependent Resurvey.
T. 28 N., R. 39 E. July 15, 1985. Supplemental Plat.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 85-21354 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-HC-M

[W-86236, W-86239]

Wyoming; Realty Action; Direct Sale of Public Lands in Sheridan County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of land parcels in Sheridan County, Nebraska.

SUMMARY: The Bureau of Land Management has determined that the following described lands are suitable for public sale and will accept bids on these lands. BLM is required to received fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Detailed bidding instructions and other sale details are available on request at BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, phone (307) 746-4453. Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Parcel No.	Acreage	Appraised value
W-86236	T. 28 N., R. 44 W., 6th P.M., Section 11, NE 1/4 SW 1/4	1	40.00	\$3,000
W-86239	T. 35 N., R. 45 W., 6th P.M., Section 32, lot 1	4	27.75	\$1,100

The lands described are hereby segregated for appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on October 23, 1985 will be conducted by direct sale procedures, and each parcel will be offered by a sealed bid process to the adjoining landowners. The bidder will be required to submit evidence of adjoining landownership before the bid can be accepted. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding according to this Notice. The patent for all parcels will include a reservation for ditches and canals. All minerals will be reserved to the United States and Parcel 4 will be subject to an oil and gas lease. A detailed description of these

reservations is available from the above address.

For a period of 45 days from the date of publication of this notice interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 28, 1985.

James W. Monroe,

Casper District Manager.

[FR Doc. 85-21352 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-84-M

[W-86237, W-86238, W-86240]

Wyoming; Realty Action; Modified Competitive Sale of Public Lands in Sheridan County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Land Parcels in Sheridan County, Nebraska.

SUMMARY: The Bureau of Land Management has determined that the following described lands are suitable for public sale and will accept bids on these lands. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Detailed bidding instructions and other sale details are available on request at BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, phone (307) 746-4453. Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Parcel No.	Acreage	Appraised value
W-86237	T. 35 N., R. 44 W., 6th P.M., Section 24, SW 1/4 SE 1/4	2	40.00	\$3,400
W-86238	T. 33 N., R. 45 W., 6th P.M., Section 20, SE 1/4 SW 1/4	3	40.00	7,000

Serial No.	Legal description	Parcel No.	Acres	Appraised value
W-86240	T. 34 N., R. 46 W. 6th P.M. Section 7, SE 1/4 NW 1/4, E 1/4 SW 1/4.	5	120.00	4,800

The lands described are hereby segregated for appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on October 23, 1985 will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to the adjoining landowners. The bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s)

change(s), it/they will be published and the land will remain open for competitive bidding according to this Notice. The patent for all parcels will include a reservation for ditches and canals. All minerals will be reserved to the United States, and all three parcels will be subject to oil and gas leases. A detailed description of these reservations is available from the above address.

For a period of 45 days from the date of publication of this notice interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 28, 1985.

James W. Monroe,
Casper District Manager.
[FR Doc. 85-21353 Filed 9-5-85; 8:45 am]
BILLING CODE 4310-84-M

Sale of Public Lands; San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Land: San Diego County, CA.

SUMMARY: The following described public land has been examined and found suitable for disposal by direct sale at not less than the appraised fair market value pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713). The lands will not be offered for sale until 60 days after the date of this notice.

Parcel No.	Serial No.	Legal description	Acres	Appraised value
SD-1	CA17646	T. 17S, R. 6E, S8M; Sec. 36: Lots 1, 7, 8 and 10.	120.56±	\$100,000

Purpose: The purpose of this direct sale is to dispose of public lands which because of location and existing private landownership patterns in the area make them difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency or department. The public interest will be well served by offering the subject land for sale. Because of the need to recognize historic use of the land described above, it shall be sold by direct sale to the existing grazing lessee and adjoining property owner, Mr. Alexander Haagen III, 3500 Sepulveda Blvd., Manhattan Beach, California 90266.

Publication of this notice in the Federal Register, segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect shall terminate upon issuance of the patent or 270 days from the date of publication, whichever occurs first.

The lands described above have no known mineral values. Conveyance of the available mineral interests will occur simultaneously with the sale of the surface estate. Acceptance of the direct sale offer by Mr. Haagen will also constitute an application for conveyance of the mineral estate requiring the submission of a \$50 nonrefundable filing fee on the day of sale.

In addition to the aforementioned application fee, Mr. Haagen shall submit a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM, for not less than 10% of the appraised value to the California Desert District, 1695 Spruce Street, Riverside, California 92507, by 10:00 a.m. on November 8, 1985. The remainder of the full purchase price shall be submitted within 60 days from the sale date.

Failure to accept an offer to purchase the offered land within the above specified time shall constitute a waiver of this preference consideration. The land will then be offered competitively.

The terms and conditions applicable to the sale area: The patent will reserve to the United States a right-of-way for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

Detailed information concerning this sale, including the environmental analysis and land report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager at the above address.

Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 9, 1985.

Wesley T. Chambers,
Acting District Manager.
[FR Doc. 85-21239 Filed 9-5-85; 8:45 am]
BILLING CODE 4310-40-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Use of Lampricides in a Temporary Program of Sea Lamprey Control in Lake Champlain With an Assessment of Effects on Certain Fish and Sport Fisheries and Notice of Public Scoping Meetings

AGENCY: Fish and Wildlife Service, Interior; New York Department of Environmental Conservation; Vermont Fish and Wildlife Department.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service (and Vermont Fish and Wildlife) intends to act as a co-lead agency with the New York Department of Environmental Conservation in

gathering information necessary for the preparation of an EIS describing the use of lampricides in a temporary program of sea lamprey control in Lake Champlain. Assessments of effects on certain fish populations and sport fisheries will be included in the document. Potential affected areas include 86.1 miles of 18 tributaries and 850 acres of 5 delta areas. Nine tributaries (48.4 mi.) and all delta areas are in New York. Eight tributaries (32.9 mi.) are in Vermont and one (4.8 mi.) is in the Province of Quebec, Canada.

Public meetings regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) (and in concert with the New York State Environmental Quality Review Act (SEQR) and implementing regulations—6NYCRR Part 617) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process is solicited.

DATES AND LOCATIONS OF PUBLIC SCOPING MEETINGS:

New York Side of Lake Champlain

Date: October 17, 1985

Time: 1:00 PM

Location: Willsboro Town Hall, Basement Meeting Room, Juncture of Rt. 22 and Willsboro Point Road, Willsboro, NY 12996

Time: 7:00 PM

Location: Clinton County Government Center, Community Meeting Room, 137 Margaret Street, Plattsburgh, NY 12901

Contact person for New York meetings and for information packets: Mr. Daniel S. Plosila, Supervising Aquatic Biologist, New York State Department of Environmental Conservation, Route 86, Ray Brook, New York 12977, Telephone: (518) 891-1370.

Vermont Side of Lake Champlain

Date: October 10, 1985

Time: 1:00 PM

Location: Vergennes High School, Auditorium Monkton Road, Vergennes, VT 05491

Time: 7:00 PM

Location: University of Vermont, Rowell Building, Room 103, Burlington, VT 05401

Contact person for Vermont meetings and for information packets: Mr. Angelo Incerpi, Director of Fisheries, Vermont Department of Fish and Wildlife, State Office Building, Montpelier, VT 05602, Telephone: (802) 828-3371.

Written comments should be addressed to and received by November 20 1985: Mr. Paul Neth, Supervisor, Inland Fisheries Section, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

SUPPLEMENTAL INFORMATION: Notice is also given that public scoping meetings are designed to (1) provide a brief description of the proposed project for informational purposes, (2) to identify impacts, alternatives and issues that should be addressed in the draft EIS (DEIS), (3) to identify other environmental review consultation, coordination, clearance, or permit requirements associated with the project, (4) to describe the role of the EIS in the planning and decision making process, and (5) to discuss the projected time frame of the draft and final EIS.

Areas potential affected by this action include the following:

TRIBUTARIES

State or Province and stream	Miles to be treated	Location	
		Counties	Townships
New York			
Great Chazy River.....	20.6	Clinton.....	Moers, Champlain, Plattsburgh.
Saranac River.....	3.3	Clinton.....	Plattsburgh.
Salmon River.....	4.0	Clinton.....	Plattsburgh.
Little Ausable River.....	5.2	Clinton.....	Peru.
Ausable River.....	5.3	Canton, Essex.....	Peru, Ausable, Chesterfield.
Bouquet River.....	2.6	Essex.....	Willsboro.
Beaver Creek.....	1.8	Essex.....	Westport.
Putnam Creek.....	4.4	Essex.....	Crown Point.
Mt. Hope Brook.....	1.2	Washington.....	Fort Ann, Dresden.
Vermont			
Lewis Creek.....	9.5	Addison.....	Ferrisburg, Charlotte, Winooski City.
Winooski River.....	7.5	Chittenden.....	Colchester, Burlington City.
Indian Brook.....	2.7	Chittenden.....	Colchester.
Malletts Creek.....	1.7	Chittenden.....	Colchester.
Trout Brook.....	1.3	Chittenden.....	Milton.
Stone Bridge Brook.....	2.7	Chittenden.....	Milton.
Missisquoi River.....	6.5	Franklin.....	Highgate, Swanton.
Youngman Brook.....	1.0	Franklin.....	Highgate.
Quebec			
Pike River.....	4.8	Missisquoi.....	Stanbridge.
Total: 18 streams.	86.1		

DELTA

State and delta	Acres involved	Counties	Townships
New York			
Saranac River	175	Clinton	Plattsburgh, Peru.
Salmon River	100	Clinton	Plattsburgh, Peru.
Little Ausable River	75	Clinton	Peru.
Ausable River	250	Clinton	Peru, Ausable.

DELTA—Continued

State and delta	Acres involved	Counties	Townships
Bouquet River	250	Essex	Willsboro.
Total	850		

FWS contact on this project is David B. Goldthwaite, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100 X208.

Dated: August 30, 1985.

Howard N. Larsen,

Regional Director.

[FR Doc. 85-21240 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 2111, 2116, 2608, and 2613, Blocks 314, 331, 313, and 332, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-21334 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-10963]

Armstrong World Industries, Inc.; Transportation Within Texas; Petition for Declaratory Order

August 30, 1985.

Notice To The Parties: Pursuant to a request, the date for filing comments is further extended to October 7, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21305 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30693]

Grand Trunk Western Railroad Co.; Trackage Rights Exemption; Consolidated Rail Corp.

The Grand Trunk Western Railroad Company (GTW), has entered into an agreement for overhead trackage rights over Consolidated Rail Corporation (CR) track beginning on the Toledo Branch at Valuation Station 1785+65, near CP Dunbar, Monroe, MI to Valuation Station 433+14 on the Eastern Branch, including the designated interchange tracks at Stanley Yard, Toledo, OH. This trackage rights agreement became effective September 27, 1984.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-21306 Filed 9-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

J.P. Stevens & Co.; Proposed Termination of Final Judgment

Notice is hereby given that J. P. Stevens & Co., Inc. (Stevens) has filed with the United States District Court for the Southern District of New York a motion to terminate the final judgment in *United States v. J. P. Stevens & Co., Inc.*, Civil No. 70-2829, and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment but has reserved the right to withdraw its consent for at least seventy (70) days after publication of this notice. The complaint in this case (filed on June 30, 1970) alleged that Stevens had conspired with wholesalers and retailers to stabilize the retail prices of Stevens prime line sheets and pillowcases and to eliminate, curtail and restrict the sale of such sheets and pillowcases by cut-price retailers. The judgment (entered on July 31, 1970), among other things, enjoins Stevens from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any wholesaler or retailer in the United States to: (A) fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of its sheets to any third person; (B) hinder, restrict, limit or prevent the sale of its sheets by any person or class of persons; and (C) restrict, limit or preclude Stevens from selling its sheets, other than sheets identified only by a trademark or trade name of a person other than Stevens, to a specified person or a specific class of persons.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Cannon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of

Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by Department of Justice regulations.

Interested persons may submit comments concerning this matter by sending them to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10273 (telephone: 212-264-0390). Such comments must be received by the Division within sixty (60) days.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-21283 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree; United States v. Rocky Mountain Motor Tariff Bureau, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received from The Pillsbury Company, Minneapolis, Minnesota on a proposed consent decree judgment in *United States v. Rocky Mountain Motor Tariff Bureau, Inc.*, Civil Action No. 84-F-1737, United States District Court for the District of Colorado, together with the response of the United States to that comment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

August 20, 1985

Re: *United States v. Rocky Mountain Motor Tariff Bureau, Inc.* Civil Action No. 84-F-1737 (D. Colo.).

Richard J. Wegener, Esq.,

The Pillsbury Company, Pillsbury Center, MS 3728, Minneapolis, Minnesota

Dear Mr. Wegener: We have received and carefully considered your letter dated June 3, 1985 regarding the proposed Final Judgment in the above case. You urge that the Final Judgment should specifically state how the defendant, Rocky Mountain Motor Tariff Bureau, Inc. (hereafter, "RMMTB"), will purge rates on exempt commodities in conformity with paragraph V(A) and that the judgment identify clearly those exempt commodities that will be purged. You presume that, unless it is subject to the requirements you propose, the defendant would purge its tariffs through supplements deleting specific presently-effective tariff items without identifying the exempt commodities contained therein.

We believe that the proposed Final Judgment is sufficient as now written. Paragraph V(A) requires that RMMTB purge

from each of its tariffs all rates for the transportation of exempt commodities. Attached to and incorporated in the proposed Final Judgment is Appendix A, a listing of exempt commodities, as specified in 49 U.S.C. 10526, as amended. In the recent past, RMMTB has published docket bulletins proposing deletion of a number of tariff items, indicating that the items may contain exempt commodities. Through a comparison of those tariff items and any later deletions of tariff items with the list contained in Appendix A to the proposed Final Judgment, any shipper can readily determine whether any of the products it ships are exempt and, if so, whether its goods are listed in the RMMTB tariffs.

Thus, the United States believes that the proposed Final Judgment is properly structured. It requires the purging of rates for exempt commodities, which are identified in an appended list, from RMMTB's tariffs; it also prohibits RMMTB from taking joint action on such rates in the future. The proposed Final Judgment provides the Government with all of the relief it sought in its Complaint and avoids the burden of any further litigation.

I note that, for your information, during the pre-Complaint investigation of this matter by the Antitrust Division, we prepared a list of joint actions taken on exempt commodities by one of RMMTB's major rate committees which has authority over Tariffs 328 and 329. A summary of our findings were filed as Appendix A to our Response to Defendant's Motion to Dismiss on March 7, 1985.

Pursuant to the provisions of 15 U.S.C. 16(d), a copy of your comments and of this letter will be printed in the Federal Register and filed with the court.

Sincerely,

Gary R. Spratling,

Chief, San Francisco Office, Antitrust Division.

The Pillsbury Company

Minneapolis, MN, June 3, 1983

Re: United States v. Rocky Mountain Motor Tariff Bureau, Inc., Civil Action No. 84-F-1737 (D. Co., Filed Aug. 28, 1984).

Gary R. Spratling, Chief, San Francisco Field Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94103.

Dear Mr. Spratling: This letter is written pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 *et seq.* and pertains to the Final Judgment proposed for the above-captioned proceeding.

We note that paragraph V(A) of the proposed judgment requires the RMMTB purge rates on exempt agricultural commodities from its tariffs within ninety days of entry of the Final Judgment.

We presume that unless otherwise required the RMMTB will do so through supplements deleting specific presently effective tariff items.

Our concern is two-fold. First, that the proposed judgment specifically state how such purging shall take place, and second, that such procedure shall result in a clear and understandable identification of the exempt

commodities now contained in RMMTB tariffs.

The practical availability of an individual private action is dependent upon the business public being able to quickly and easily understand the identity of the tariffs affected. This cannot be achieved, for example, if the Bureau is allowed to simply eliminate its offensive tariffs by republishing an amended tariff schedule which excludes the subject provisions.

If the Department accepts anything less than a detailed public listing of the offensive provisions which are to be canceled, it would deny the business public its role as an ally of the Government in enforcing the antitrust laws.

Sincerely,

Richard J. Wegener.

[FR Doc. 85-21287 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Hoffmann La Roche Inc.; Registration

By Notice dated December 12, 1984, and published in the Federal Register on January 8, 1985; (50 FR 1003), Hoffmann La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule I
Tetrahydrocannabinols (7370) (for manufacturing diagnostic products for non-human consumption to detect THC in urine).	I
Alphaprodine (3010)	II
Leverphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 22, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-21309 Filed 9-5-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before November 5, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Administrative Office of the United States Courts, Magistrates Division (NC1-116-85-5). Records relating to the management of United States Magistrates' office in the Federal court system.

2. United States Forest Service (NC1-95-84-4). Routine correspondence relating to land classification, boundary modifications, and land transfer analyses, as well as duplicate and microfiche copies of land transfer and boundary modification case files designated for archival retention.

3. U.S. Department of Agriculture, Animal and Plant Health Inspection Service (NC1-463-85-2). Records relating to veterinary biologicals production, marketing, and transportation, including licenses, labels, inspection reports, transportation requests and authorizations, and import/export certificates.

4. Department of the Army, Office of the Adjutant General (NC1-AU-84-36). Records relating to the proposal, coordinating action, and approval of popular names for major items of development equipment. Records with reference and research value will be accessioned by the National Archives.

5. Department of the Army, Office of the Adjutant General (NC1-AU-85-67). Communicable disease reporting files, including notifications of cases of animal communicable diseases.

6. Department of Health and Human Services, Office of Child Support Enforcement (NC1-292-84-3). Records of the Program Operations Division including plans, issuances, reports, and subject and administrative files.

7. Department of Health and Human Services, Office of Child Support Enforcement (NC1-292-84-4). Records of the Audit Division including reports, working drafts and documents, and administrative files.

8. Department of Health and Human Services, Office of Child Support Enforcement (NC1-292-84-5). Records of the Policy and Planning Division including subject, plans, reports, project, and administrative files.

9. Federal Communications Commission, Mass Media Bureau (NC1-173-85-5). Affiliation contracts and related correspondence for commercial broadcast stations.

10. Department of Justice, Federal Bureau of Investigation, Records Management Division (NC1-65-85-12), (NC1-65-85-13), and (NC1-65-85-14). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

11. Department of the Navy, U.S. Marine Corps, (NC1-127-85-1). Routine administrative correspondence files of Marine Corps Battalion level and Marine Barracks commands.

12. Tennessee Valley Authority, Office of Natural Resources and Economic Development (NC1-142-85-5). Comprehensive records schedule covering paper and audiovisual records dealing with community development.

13. Tennessee Valley Authority, Office of Power Operations (NC1-142-85-11). Document control and item identification code logs used to track and control TVA commodities.

14. Agency for International Development, Predecessor Agencies (NC1-286-85-8). Routine administrative records from the overseas missions and the Washington office; overseas mission records of activities adequately documented in the Washington office.

15. Commodity Futures Trading Commission (NC1-180-85-1). Revises schedule for the destruction of registrant applications to include records transferred to the National Futures Associations.

16. Department of Health and Human Services, Office of Child Support Enforcement (NC1-292-84-6). Records of the Office of the Director including the Deputy Director's administrative files, public inquiry and information files, special collections unit files, and general program administrative files.

17. Department of Navy, Naval Intelligence Support Center (NC1-289-85-1). Magnetic tapes containing raw data in analog form derived from remote sensing devices.

18. Department of State, (NC1-59-84-5). Administrative and financial records of the Sinai Support Mission, excluding those with research and reference value that will be accessioned by the National Archives.

19. Department of the Treasury, Fiscal Assistant Secretary (NC1-56-85-2). Miscellaneous subject files, approximately 1930-1984, collected for reference purposes, and largely duplicated elsewhere.

20. Veterans Administration (NC1-15-85-4). Copies of closed vocational rehabilitation contract files pertaining to education and training of veterans.

21. Veterans Administration (NC1-15-85-5). Records relating to loan management and allied security instrument transactions on settled portfolio loan accounts.

22. Environmental Protection Agency, Office of the Administrator and the Deputy Administrator (NC1-412-85-11). Information copies of speeches given by the Administrator and the Deputy Administrator.

23. Veterans Administration (NC1-15-85-7). Centralized Accounts Receivable Microform Records.

24. Department of the Army, Office of the Adjutant General (NC1-AU-85-72). Records of various Army laboratories, ca. 1920-1967, including correspondence, reports, manuals, bulletins, case files, and specifications and drawings files. Records with reference and research value will be accessioned by the National Archives.

Dated: August 29, 1985.

James E. O'Neill,

Acting Archivist of the United States.

[FR Doc. 85-21307 Filed 9-5-85; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-423A]

Northeast Nuclear Energy Co. et al.; Finding of No Significant Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 3 of the Millstone Nuclear Power Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the

events since issuance of the Millstone 3 construction permit to Northeast Nuclear Energy Company, et al., the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New England, the events relevant to the Millstone 3 construction permit review and the events that have occurred subsequent to the construction permit review.

The conclusion of the staff's analysis is as follows:

The Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) is jointly owned by 15 electric utilities in Connecticut, Massachusetts, Maine and Vermont. The Northeast Nuclear Energy Company, a subsidiary of the Northeast Utilities holding company, has no ownership in Millstone 3, but acts as agent and representative of the owners in design, construction and operation of the nuclear unit. Northeast Utilities has the largest ownership share in Millstone 3, approximately 65%, shared by two of its operating subsidiaries, Connecticut Light and Power Company with approximately 53% and Western Massachusetts Electric Company with slightly over 12%. The remainder of the unit is shared by other investor owned utilities (over 25%), municipal utilities (approximately 9%) and electric cooperatives (over 1%). The Department of Justice (Department), in connection with the construction permit antitrust review of Millstone 3, rendered antitrust advice to the Commission by letter dated August 10, 1973 *Federal Register*, Vol. 38, No. 159, p. 22249, August 17, 1973). The Department's advice letter noted that while there has been allegations that the large electric utility systems had in various ways precluded the small systems in the area from gaining access to low cost bulk power supply on the same basis as the large systems, the situation had markedly improved with the formation of the New England Power Pool (NEPOOL). Although, several municipal systems had contested certain provisions of the power pool agreement, a settlement agreement had been reached representing a compromise among most of the parties concerning the disputed portions of NEPOOL as filed with the Federal Power Commission (FPC).

In the Millstone 3 advice letter, the Department also noted that there had been complaints by several municipal systems that the transmission rates of Northeast Utilities (NU) were too high. The Department considered these complaints as a rate matter,

more appropriately under the jurisdiction of the FPC. The Department also advised that a group of 6 municipal systems in Connecticut had filed an antitrust suit against NU and its Connecticut operating subsidiaries. The Department chose not to pass judgment upon the allegations in the antitrust suit, but noted that most of the allegations focused upon the rates, and terms and conditions of wholesale service to the municipal systems, matters which the Department presumably considered to fall primarily under the jurisdiction of the FPC.

Following the Millstone 3 construction permit antitrust advice letter, the Department furnished antitrust advice in June 1974, January 1975, November 1975, December 1976, and March 1980 related to the Pilgrim 2 and 3, Montague, New England 1 and 2, Seabrook 1 and 2, and Pilgrim 1 applications, respectively. These applications involved many of the same applicants in Millstone 3. In addition, the Department conducted numerous antitrust reviews at various times for changes in ownership in Millstone 3 and in the other nuclear plant applications. In each instance, the Department recommended that no antitrust hearing was required, often pointing to the dramatic improvement in the relations among the various segments of the electric power industry in New England following the formation of NEPOOL and the associated settlement agreement.

Similarly, the suit filed by the 6 Connecticut municipal electric utilities, which the Department referred to in its Millstone 3 antitrust advice letter, has been resolved. The District Court dismissed all allegations in its decision of August 1980.

Thereafter, three of the cities reached a settlement with Connecticut Light and Power Company. The other three cities carried the case to the Appeals Court, which issued a decision in October 1981. The NRC staff finds the settlement agreement and the court rulings to be dispositive of the issues raised. Likewise, a settlement agreement in 1983 among the Town of Norwood, Massachusetts, the Boston Edison Company and the New England Power Company has disposed of issues raised by the Town of Norwood before the U.S. District Court of Massachusetts.

In addition to the issues raised in the various court proceedings, the Department of Justice antitrust review of Millstone 3 and its subsequent antitrust reviews of other nuclear power plant applications, the NRC staff has reviewed the data provided by applicants and attendant information associated with and accompanying the Millstone 3 construction permit and operating license applications. In the process of this review, staff identified three groups of changes that could have had possible competitive implications on bulk power supply in the New England region. These changes involved certain mergers and transfers of facilities among electric utilities in the area; transfers of ownership rights in Millstone 3 and the formation of joint action agencies in the region. After analyzing these changes, in conjunction with developments that were initiated prior to and during the construction permit (CP) antitrust review (i.e., the development of NEPOOL and the associated settlement agreement), staff found no

significant anticompetitive effects resulting from these changes.

On the contrary, staff has found that the period during and following the CP review for Millstone 3 has been characterized by significant competitive improvements in the way bulk power is allocated in New England. The development of the New England Power Pool and its open pooling concept established the region as a model of how cooperation among all bulk power suppliers in the region has promoted competition among large systems and small systems alike. The fruits of negotiations and compromise that characterized the period during and after the CP review are now being realized by all systems—particularly the smaller systems—throughout New England. Consequently, staff does not recommend that the Director of Nuclear Reactor Regulation issue a significant change finding pursuant to the operating license for Unit 3 of the Millstone Nuclear Power Station.

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Millstone Nuclear Power Station, Unit 3 is not required.

Signed on August 30, 1985 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the *Federal Register* notice. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission,

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21337 Filed 9-5-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee for Review of Enforcement Policy; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Committee on the Enforcement Policy will meet on September 23 and 24, 1985 to continue drafting its final report to the Commission. The meeting will be open to the public. The meeting will be held in Room 118 of the Phillips Building, 7920

Norfolk Avenue, Bethesda, Maryland from 8:45 a.m. until 5:00 p.m. each day.

Further information on the meeting may be obtained from Karen Cyr, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7269.

Dated at Washington, D.C., this 3rd day of September, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-21338 Filed 9-5-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standard Amendments; Additional Hearing

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of additional public hearing.

SUMMARY: In July, the Northwest Power Planning Council (Council) released for public comment proposed amendments to portions of its Northwest Conservation and Electric Power Plan (Plan) concerning model conservation standards (MCS), set a deadline for receipt of public comments regarding the amendments, and scheduled public hearings (50 FR 30654-61, July 26, 1985). Subsequently, the Council extended the deadline for receipt of public comments and rescheduled two of the previously-announced public hearings (50 FR 33435, August 19, 1985). To provide ample opportunity for interested parties to submit public comments, the Council has now scheduled an additional hearing in Portland, Oregon.

DATE AND ADDRESS: The following hearing has been added to the Council's previously-announced schedule:

- Portland, Oregon, Wednesday, September 11, 1985, beginning at 10 a.m. in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Ruth Curtis, Information Coordinator, at the Council's central office (850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 or 503-222-5161, toll free 1-800-222-3355 in Idaho, Montana and Washington or 1-800-452-2324 in Oregon).

SUPPLEMENTARY INFORMATION: The Council held a public hearing on its proposed MCS amendments in Portland, Oregon on August 6, 1985. In response to requests made by commenters at the August 6 hearing, the Council has now scheduled an additional hearing in Portland.

Rick Applegate,

Executive Assistant.

[FR Doc. 85-21271 Filed 9-5-85; 8:45 am]

BILLING CODE 0000-00-M

PENSION BENEFIT GUARANTY CORPORATION

Multiemployer Pension Plans; Withdrawal Liability in Fully Funded Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of consideration.

SUMMARY: This notice advises employers, multiemployer plan sponsors and other interested persons that the Pension Benefit Guaranty Corporation (PBGC) is reconsidering a multiemployer plan's right to assess withdrawal liability under section 4201 of ERISA in a year following a year in which the plan has no unfunded vested benefits. The PBGC expects to issue its interpretation in the form of an opinion letter. This notice is to solicit public comment concerning the interpretation of the indicated statutory provisions.

DATE: Comments must be received on or before November 5, 1985.

ADDRESSES: Comments should be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Louise E. Cayne, Attorney, Legal Department, Code 250, 2020 K Street NW., Washington, D.C. 20006, 202-254-4895 (202-254-8010 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

The Statute

Under the Employee Retirement Income Security Act of 1974 as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), an employer that withdraws from a multiemployer pension plan covered under Title IV of ERISA may be liable to

the plan for a portion of the plan's unfunded vested benefits. Section 4211 of ERISA establishes four different methods of computing withdrawal liability. These methods are: The presumptive method, described in section 4211(b); the modified presumptive method, described in section 4211(c)(2); the rolling-5, method described in section 4211(c)(3); and the direct attribution method, described in 4211(c)(4). Application of these sections, other than section 4211(c)(3), may result in a multiemployer plan's assessing withdrawal liability on a withdrawing employer in cases where the plan's assets equal or exceed its vested liabilities *i.e.*, the unfunded vested benefits are zero.

The Interpretation

In Opinion Letter 83-19 (August 11, 1983), the PBGC took the position that a withdrawing employer may incur withdrawal liability under the presumptive method even though the plan has no unfunded vested benefits. The PBGC has received several requests for reconsideration of Opinion Letter 83-19. The requests suggest that because the purpose of the allocation methods in Section 4211 is to allocate a plan's unfunded vested benefits among employers, the credits and charges for a particular employer are irrelevant when the plan has no unfunded vested benefits to allocate. One request asserts that imposition of liability by a plan with no unfunded vested benefits is inconsistent with purposes of the withdrawal liability provisions; is inequitable to employers, particularly because the *de minimis* provisions afford no relief when a plan's unfunded vested benefits are zero; and is often burdensome to plans, particularly construction industry plans, which are required to use the presumptive method. Several requests suggest that no withdrawal liability should be assessed when a plan has no unfunded vested benefits. If a plan using the presumptive method subsequently develops unfunded vested benefits, it is further suggested that the withdrawal liability calculations should be based on the employer's share of unamortized changes in unfunded vested benefits and reallocated unfunded vested benefits only for years following the last year in which that plan had no unfunded vested benefits. One writer has suggested that even though withdrawal liability for a plan with zero unfunded vested benefits may be appropriate under certain allocation methods, it would not be

appropriate under the direct attribution method.

The PBGC is reconsidering the statutory interpretation expressed in Opinion Letter 83-19 in response to these requests. The PBGC requests public comments on the proper application of each of the statutory allocation methods, and particularly the presumptive method, in plan years when a plan has no unfunded vested benefits and in subsequent plan years.

Specifically, the PBGC requests responses to the following questions:

1. Does section 4211 mandate or prohibit assessment of withdrawal liability against an employer that withdraws from a multiemployer plan with no unfunded vested benefits.
2. Does the answer to question 1 depend on the allocation method used?
3. If in a subsequent year a plan's unfunded vested benefits exceed zero, how should withdrawal liability for later withdrawals be calculated? For example, should an employer's liability under the presumptive method be based only on the employer's share of unamortized changes in unfunded vested benefits and reallocated unfunded vested benefits only for years following the last year in which the plan has no unfunded vested benefits?

Public Comments

The PBGC hereby solicits public comment concerning these questions including any comments on related issues and the implications and practical effect that particular interpretations may have on employers, multiemployer pension plans and the pension insurance system. Comments should specify the statutory basis for the interpretations presented. Comments should be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006.

Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name, address, identify this notice, and give reasons for any recommendation.

Issued in Washington, D.C., 3rd day of September 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-21350 Filed 9-5-85; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22374; SR-MSRB-85-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

Introduction

The Municipal Securities Rulemaking Board ("MSRB") on March 11, 1985 submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-32 on disclosures in connection with new issues, and rules G-8 and G-9 on recordkeeping. Rule G-32 currently prohibits a municipal securities broker or dealer from selling during the underwriting period new issue municipal securities to a customer unless, at or prior to sending the final confirmation of the transaction, a copy of the final official statement, if available is sent to the customer. Rule G-32 also requires dealers to furnish copies of official statements and other disclosures upon request to any broker, dealer, or municipal securities dealer to which it sells new issue municipal securities. The rule is designed to ensure that a purchaser of new issue securities is provided with all available information relevant to his investment decision.

The proposed rule change is designed to delineate more clearly the responsibilities of dealers that sell new issue municipal securities as well as to strengthen and facilitate enforcement of rule G-32. Specifically, the amendments to rule G-32 would require first, that rule G-32 disclosures in final form, which include a final official statement if prepared by or on behalf of the issuer, be delivered to a customer by settlement of the transaction. Second, a preliminary official statement need be delivered only when no official statement has been prepared, along with a written notice that a final official statement has not been prepared. Third, if a final official statement is being prepared, the financial advisor or the managing underwriter must make the final official statement available no later than two business days before the date the manager delivers the securities to the syndicate members. Fourth, the managing underwriter must be prepared to provide to a broker, dealer or municipal securities dealer that has purchased the new issue and has requested an official statement, one copy of the final official statement and other rule G-32 disclosures and one

additional official statement per \$100,000 par value of the new issue purchased.

Rules G-8 and G-9 set forth the recordkeeping and record retention requirements, respectively, for brokers, dealers, and municipal securities dealers. The proposed rule change would add a new section to rule G-8 requiring a dealer to maintain a record of deliveries of rule G-32 disclosures and would amend rule G-9 to require that these records be retained for a period of not less than three years.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21968, published in the *Federal Register* (50 FR 18338; April 30, 1985) ("April 30 release"). A complete description of the amendments is contained in that release.¹

Comments

In response to the April 30 release, the Commission received seven comment letters.² While the commentators generally supported the rule change's goal of strengthening the requirements of rule G-32, several specific comments were critical of the proposed rule change. First, most of the commentators addressed the proposed requirement that final official statements be delivered by settlement of the transaction. One commentator noted that requiring official statements to be delivered by settlement rather than sent with the final confirmation as currently required, still would not allow sufficient time to permit compliance with the rule. In this regard, the MSRB has indicated that this requirement is designed to address the complete failure of a dealer to provide customers with official statements and not the situation in which delivery of an official statement

¹ On August 5, 1985, the MSRB filed with the Commission an amendment ("Amendment No. 1") to the proposed rule change (File No. SR-MSRB-85-11) containing the text of the amended definition of "new issue municipal securities" excluding short term tax exempt commercial paper, and an interpretation that presumes that disclosures mailed to a customer at least three business days prior to settlement of the transaction have been received by the customer by settlement of that transaction.

² Letters from Charles S. Garland, Jr., Managing Director, Alex. Brown & Sons, Inc. (June 10, 1985); James J. Stahlnecker, Chairman, Municipal Bond Committee, The Cashiers' Association of Wall Street (May 23, 1985); Kathleen A. Graffam, Operations Officer, Bond Operations, Continental Bank (April 16, 1985); Jean J. Rousseau, Division Director, Municipal Securities Division, Merrill Lynch Capital Markets (June 12, 1985); Frank J. Wilson, Executive Vice President and General Counsel, National Association of Securities Dealers, Inc. ("NASD") (June 6, 1985); Jan L. Meyer, Vice President, Newhard & Cook & Co. (June 6, 1985); Jeffrey H. Smith, Chairman, Municipal Securities Division Operations & Compliance Committee (June 3, 1985) to John Wheeler, Secretary, SEC.

is delayed a day or so because of the mail system. Further, the MSRB has provided an interpretation of the proposed official statement delivery requirement to the effect that an official statement mailed three days before settlement date is presumed to have been delivered to the customer by settlement of the transaction.³

Second, a number of commentators addressed the proposed requirement that managers or financial advisors make the final official statement available at least two business days prior to the date the manager delivers the securities to the syndicate. These comments indicated that the two business day requirement is not sufficient to ensure that an official statement will be distributed to customers as required by the rule, particularly when a customer or its dealer are located outside New York. Some commentators suggested that a four or five business day requirement should be used. In this connection, the MSRB has retained the two-day requirement, emphasizing that this is a minimum requirement and that managers and financial advisors are strongly urged to make final official statements available as soon after the date of sale as possible.

Third, some commentators argued that dealers selling new issues of commercial paper and variable rate demand instruments which commonly are traded on a cash (same day settlement) basis, would be unable to comply with rule G-32. In this regard, the MSRB has determined to exclude short term tax exempt commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents, although an official statement may not be prepared to accompany any specific issue of these securities.⁴ The MSRB has concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities, and given the differences between the disclosure practices for these issues and other types of municipal securities, it would not be appropriate to include these issues in the rule G-32 definition of new issue municipal securities. The MSRB did not reach the same conclusion regarding variable rate demand instruments, believing that there still appeared to be a need for disclosure documents for these securities and thus did not provide an exemption for these securities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder. The Commission supports the proposed rule change and its goal of ensuring that customers receive information necessary to make informed decisions regarding the purchase of new issue municipal securities. Furthermore, the Commission believes that experience gained with the amendments will indicate whether the objectives of the proposal are being satisfied; the Commission anticipates that the MSRB will further refine its rules if aspects of the amendments prove unsatisfactory or unworkable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 30, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21343 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23815; 70-7138]

American Electric Power Company, Inc., et al.; Proposed Amendment of Term Loan Agreements

August 30, 1985.

AEP Generating Company ("AEGCo") and American Electric Power Service Corporation ("AEPSC"), 1 Riverside Plaza, Columbus, Ohio 43215, Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, (collectively "Declarants") and their parent company, American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By orders dated September 13, 1982, October 8, 1982, December 21, 1982, December 22, 1982, December 29, 1982, May 3, 1983, June 13, 1983, December 30, 1983, April 10, 1984, and August 17, 1984 (HCAR Nos. 22633, 22663, 22791, 22797,

22805, 22926, 22973, 23192, 23279, and 23399, respectively), the Commission authorized AEGCo, AEPSC, Kingsport, Michigan, and Wheeling to enter into fixed-rate, term-loan agreements and Declarants subsequently entered into such agreements with The Chase Manhattan Bank, N.A. ("Chase") as follows:

Company	Amount	Interest rate (per cent)	Term of agreement
AEGCo	\$25,000,000	13.85	Aug. 30, 1984, to Aug. 30, 1989.
AEPSC ¹	5,000,000	12.00	June 13, 1983, to June 13, 1988.
AEPSC ¹	10,000,000	11.71	Oct. 13, 1983, to Oct. 14, 1986.
Kingsport	5,000,000	12.10	June 16, 1983, to June 16, 1988.
Michigan	5,000,000	12.10	Do.
Wheeling	5,000,000	12.10	Do.

¹ American unconditionally guaranteed the principal and interest of the notes under these agreements.

Declarants now request authorization to refinance the above fixed-rate, term-loan agreements with Chase ("Agreements") and the unsecured promissory notes thereunder at any time until March 31, 1986, at a fixed interest rate equal to or lower than the interest rate presently in effect for each Agreement. Alternatively, if credit market conditions appear attractive, Declarants propose to extend the maturity date of any of the Agreements to a date on or before December 31, 1995, at a fixed interest rate of 1% or less above the present interest rate in such Agreement whose maturity is extended. If the maturity date of an Agreement is extended, the interest rate for such Agreement will recover costs of prepayment of the note, and no separate prepayment fee will be made. The notes under any refinanced Agreements will mature on a date not more than ten years from the effective date of the amendment of any Agreement and no later than December 31, 1995.

Each refinanced Agreement will be amended to provide that a Declarant pay to Chase the principal amount of the note thereunder and accrued interest thereon, on a quarterly basis and reborrow the principal amount of each note on each repayment date. Each refinanced Agreement will provide that in the event a note is paid prior to maturity, a Declarant will be required to pay a fee to Chase calculated to reimburse Chase for interest lost, if any, as a result of the prepayment. No compensating balances or commitment fees will be required. All other terms and conditions of the Agreements, to the extent not modified by the Amendment described herein, will remain

³ See *supra* note 1.

⁴ See *supra* note 1.

unchanged. Chase intends to sell participations in all or any part of the refinanced Agreements and the notes thereunder to other banks or entities.

Declarants state that prevailing interest rates are attractive to warrant the proposed refinancing. Declarants also believe it would be of long-term benefit to each Declarant and its customers to refinance the Agreement in whole or in part for a long maturity if interest rates are attractive, even though such long-term notes may have a fixed rate of interest higher than the interest rate under the Agreements.

In order to induce Chase to enter into the refinancing of the Agreements between AEPSC and Chase, American proposes to unconditionally guarantee the principal and interest of the notes under such amended Agreements.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the Declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-21340 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23810; 70-7154]

**Blackstone Valley Electric Co.;
Proposal To Increase Unsecured
Indebtedness Limitation of Preferred
Stocks; Order Authorizing Solicitation
of Proxies**

August 30, 1985.

Blackstone Valley Electric Company ("BVEC"), Washington Highway, P.O. Box 11, Lincoln, Rhode Island 02865, a wholly owned subsidiary of Eastern Utilities Associates, a registered holding company, has filed a declaration with the Commission subject to sections 6(a),

7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

The terms of the preferred stock of BVEC provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of the company having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital and surplus of the company. The amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

At a special meeting of the holders of BVEC preferred stock held on November 24, 1980, BVEC was authorized, for a five year period ending November 21, 1985, to issue or assume unsecured indebtedness, having maturities of less than ten years, in excess of the 10% limitation.

BVEC proposes to extend, for an additional five year period, the authorization adopted on November 24, 1980 by the preferred stockholders. In connection therewith, BVEC proposes to solicit proxies from its preferred stockholders.

Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series, namely, its 4.25% Series and its 5.60% Series, both having a par value of \$100 per share) voting as a single class.

The declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice on order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing that the declaration, as amended, regarding the proposed

solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, pursuant to Rule 62, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-21341 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23814; 70-7153]

**Middle South Utilities, Inc. and
Louisiana Power & Light Co.; Proposal
To Issue and Sale Subsidiary Common
Stock to Parent and To Amend Charter**

August 30, 1985.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned subsidiary, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed an application-declaration with the Commission subject to sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 50(a)(3) thereunder.

LP&L proposes to issue and sell to MSU, and MSU proposes to purchase, through December 31, 1986, and aggregate of not in excess of 15,152,000 additional shares of its authorized but unissued common stock, without nominal or par value ("Additional Shares"), for an aggregate cash purchase price not to exceed \$100 million. LP&L will use the proceeds of such sales to finance, in part, (including the retirement of short-term indebtedness incurred in financing) its construction program, to meet its obligations to pay for capacity and energy from Unit No. 1 of the Grand Gulf Station and for other corporate purposes.

Upon each issuance and sale of Additional Shares, LP&L proposes to credit its Common Stock Capital Account with the amount (in the aggregate not more than \$100 million) received by it for such stock, and MSU proposes to debit its investment Account with the amount (in the aggregate not more than \$100 million) of its cash investment in such stock.

On August 26, 1985 the Board of Directors of LP&L announced that it had not declared a dividend to MSU for its third quarter common stock. The News Release announcing the decision states that: "This action was taken after consideration of the financial obligations of the company, its needs to conserve available cash resources in the absence of urgently needed rate relief, the long-term interests of its equity security holders and restrictions in the Company's corporate documents on the declaration of common stock dividends."

To make the findings under section 7(d) of the Act necessary to permit the application-declaration to become effective, the Commission must find, among other things, that the security is reasonably adapted to the earning power of LP&L. The Commission also must find that the securities to be issued are reasonably adapted to the financial structure of LP&L and the other companies in the Middle South system as well. The Commission further must find that the terms and conditions of such securities are not detrimental to the public interest or the interest of investors or consumers. Based on the record presently before it, the Commission has serious reservations about its ability to make such findings. The Commission has serious reservations about its ability to make such findings. The Commission therefore requests all interested persons, including state regulatory authorities with jurisdiction over the rates charged by operating companies in the Middle South system, to address these issues in comments submitted on the instant application-declaration.

The application-declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be

granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21342 Filed 9-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23816; 70-7142]

**Northeast Nuclear Energy Co. et al;
Proposal To Amend and Restate Plant
Agreement and Owners Lease, Sale
and Leaseback of Utility Assets**

August 30, 1985.

Northeast Nuclear Energy Company ("NNECO"), The Connecticut Light and Power Company ("CL&P"), Connecticut Yankee Atomic Power Company ("CYAPC"), P.O. Box 270, Hartford, Connecticut 06141, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, all electric utility subsidiaries of Northeast Utilities ("Northeast"), a registered holding company, have filed an application-declaration with this Commission subject to sections 9(a), 10, and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 90 and 91 thereunder.

CL&P and WMECO (collectively, "the Owners") have direct or indirect ownership interests in four nuclear generating units: Millstone 1, Millstone 2, and Millstone 3 (the "Millstone Units") located Millstone Point in Waterford, Ct., and the Haddam Neck Unit located in Haddam Neck, Ct. The Owners provide managerial and administrative services to CYAPC through their affiliate, Northeast Utilities Service Company ("NUSCO"), another subsidiary of Northeast.

The Owners have arranged, through NUSCO, to purchase a nuclear power plant control room simulator system ("Simulator") for each of the Units ("Simulator 1", "Simulator 2", "Simulator 3", sometimes referred to as the "Millstone Simulators", and the "CY Simulator") from the Link Simulation Systems Division of the Singer Company ("Singer/Link") pursuant to a contract (the "Singer/Link Contract") between NUSCO and Singer/Link. In the Singer/Link Contract, Singer/Link agreed to design, construct and install the Simulators in a building (the "Building") to be constructed on land (the "Building Site") owned by the Owners near the Millstone site. NNECO leased the Building Site from the Owners pursuant to a ground lease dated August 26, 1983

(the "Owners Lease"), and has served as agent of the Owners with respect to the construction of the Building and the acquisition of Simulators 1 and 2 and related financing (HCAR No. 23038, August 22, 1983). Applicants-declarants propose to extend the ending date of the Owners Lease from the present expiration date to December 31, 2025 pursuant to an Amended and Restated Ground Lease which would replace the Owners Lease.

Simulators 3 was delivered by Singer/Link in December 1984 and first placed in service in February 1985. Simulators 2 was delivered by Singer/Link in April 1985 and placed in service in May 1985. The CY Simulator is expected to be delivered by Singer/Link in October 1985 and placed in service in December 1985, and Simulator 1 is expected to be delivered by Singer/Link in November 1985 and placed in service December 1985. When Simulators 1, 2, 3, and the CY Simulator have been fully tested and accepted, and the final payment made to the vendor, it is estimated that they will have cost \$10,475,000, \$11,700,000, \$12,625,000, and \$9,700,000, respectively.

CLAP, WMECO and NNECO, parties to an Amended and Restated Millstone Plant Agreement ("Millstone Plant Agreement"), propose a further amendment and restatement of the Millstone Plant Agreement ("New Millstone Plant Agreement") to allow NNECO to render services with respect to the Millstone Units and the nuclear fuel for the units. In return for NNECO's services, CL&P and WMECO would each pay NNECO its respective share of all the NNECO's expenses incurred with respect thereto.

NNECO and CYAPC propose to enter into an agreement (the "CYAPC Agreement") wherein NNECO would grant CYAPC the right to operate the CY Simulator in the Building and would provide services related thereto. CYAPC would reimburse NNECO for all expenses incurred by NNECO with respect to the CY Simulator and CYAPC's portion of the Building. The Owners would each pay NNECO its allocable share of NNECO's expenses related to the ownership, operation, and maintenance of the Building and its allocable share of NNECO's return on equity. Under the New Millstone Plant Agreement and the CYAPC Agreement, NNECO would have sole authority to determine when and how the Millstone Plant and the Building will be operated.

NNECO also proposes to sell all of its right, title and interest in Simulators 1 and 2 to the Prudential Insurance Company of America ("Prudential"), for the full capitalized cost thereof, and

then to lease Simulators 1 and 2 back from Prudential pursuant to a Simulator Financing Lease Agreement. The Simulator Financing Lease Agreement will be a "net" lease: NNECO will bear all expenses related directly or indirectly to the transaction including but not limited to maintenance, insurance, and taxes other than taxes on the net income of Prudential. NNECO will use the proceeds of the sale to Prudential to prepay NUSIMCO Inc. (a corporation formed specially for the construction financing for the Building and Simulators 1 and 2), the installment purchase price of Simulators 1 and 2, pursuant to the Construction Agreement. NNECO will also use the proceeds from the financing to pay the balance of the payments due Singer/Link with respect to Simulators 1 and 2. Prudential will pay an aggregate total acquisition cost of up to \$23 million for Simulators 1 and 2. The basic lease term of each of Simulators 1 and 2 shall be for a period of five years, after which time the lease of each Simulator shall be extended from month to month for an additional period of ten years unless terminated sooner. Prior to the commencement of the Basic Lease Term with respect to each of Simulators 1 and 2, and no later than June 26, 1986, NNECO shall request Prudential to specify a fixed rate for each portion of such Simulator, such rate to be equal to the yield on 10 year Treasury Notes at that time.

The Owners, acting through NUSCO as their agent, propose to sell their aggregate 64.85% undivided interest in Simulator 3 to ComPlan, Inc., a leasing company which is a wholly owned subsidiary of Bankers Leasing Corporation, and NNECO proposes to lease the interest from ComPlan pursuant to an Amended and Restated Master Leasing Agreement. Subject to all of the terms and conditions of the Amended and Restated Master Leasing Agreement, ComPlan has agreed to pay an aggregate total acquisition cost of up to \$8.2 million for the Owners 64.85% undivided interest in Simulator 3. The proceeds of the proposed sale will be used by the Owners to reduce outstanding indebtedness. The lease term of Simulator 3 shall be for a period of one year, after which the lease shall be extended from month to month for an additional period of fourteen years, unless terminated sooner. Following the lease of Simulator 3 for fifteen years, NNECO may purchase Simulator 3 from ComPlan for one dollar.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public

Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 23, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-21344 Filed 9-5-85; 8:45 am]
BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Availability of Appendices to Comprehensive Strategy Report

AGENCY: Synthetic Fuels Corporation.

ACTION: Notice of availability of Appendices to Comprehensive Strategy Report.

SUMMARY: Notice is hereby given that at a meeting of the Board of Directors on August 21, 1985, the United States Synthetic Fuels Corporation approved the Appendices to the Comprehensive Strategy Report, and directed that the Chairman make copies of the Appendices available for public review in the public reading room of the Corporation. Copies of the Appendices are now available in the Office of Public Disclosure.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460. United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

August 30, 1985.

[FR Doc. 85-21237 Filed 9-5-85; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 28-85]

Treasury Notes, Series M-1990

Washington, August 29, 1985.

The Secretary announced on August 28, 1985, that the interest rate on the notes designated Series M-1990, described in Department Circular—Public Debt Series—No. 28-85 dated August 21, 1985, will be 9% percent. Interest on the notes will be payable at the rate of 9% percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-21270 Filed 9-5-85; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 209 (Rev. 1)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The delegation order authorizes the appropriate officials to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level, to sign the notice of final partnership or S corporation administrative adjustment and enter into and approve written agreements with partners or shareholders with respect to the determination of partnership or S corporation items. The text of the order appears below and extends the authority to Windfall Profit Tax Matters as provided for in IRC Section 6232.

EFFECTIVE DATE: August 27, 1985.

FOR FURTHER INFORMATION CONTACT: Robert H. Gill, OP:EX, 1111 Constitution Avenue, NW., Room 2509, Washington, DC 20224, 202-566-4269 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1978.

Percy Woodard, Jr.,

Assistant Commissioner (Examination).

Order No. 209 (Rev. 1)

Effective date: 8-27-85

Delegation of Authority in Partnership and S Corporation Matters

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6232, 6243, and 6244, and Treasury Department Order 150-37:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to:

- a. Revenue Agents (grade GS-11 and higher), in district offices; and
- b. Chief, Examination Branch (GM 512-14), in service centers.
- c. Chief, Classification Section (GM 512-13), in service centers.
- d. Chief, Examination Support Unit, (GM 512-13), in service centers.
- e. Chief, Windfall Profit Tax Staff (GM 512-13), in the Austin Service Center.

2. Authority to sign the notice of final partnership or S corporation administration adjustment is delegated to:

- a. Chief Counsel;
 - b. Regional Counsel;
 - c. Regional Directors of Appeals;
 - d. Chiefs and Associate Chiefs of Appeals Offices;
 - e. Appeals Team Chiefs as to their respective cases;
 - f. Revenue Agents (Reviewers), (grade GS-11 and higher), in Examination Division;
 - g. Chief, Examination Branch, in service centers;
 - h. Chief, Classification Section (GM 512-13) in service centers; and
 - i. Chief, Examination Support Unit (GM 512-13), in service centers.
 - j. Chief, Windfall Profit Tax Staff (GM 512-13), in the Austin Service Center.
3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or S corporation items for such partnership or S corporation taxable year is delegated to:
- a. Chief, Counsel;
 - b. Regional Counsel;
 - c. Regional Directors of Appeals;

d. Chiefs and Associate Chiefs of Appeals Offices;

e. Appeals Team Chiefs as to their respective cases;

f. Revenue Agents (Reviewers), (grade GS-11 and higher), in Examination Division;

g. Chief, Examination Branch, (GM 512-14) in service centers;

h. Chief, Classification Section (GM 512-13), in service centers. and

i. Chief, Examination Support Unit, (GM 512-13), in service centers.

j. Chief, Windfall Profit Tax Staff (GM 512-13), in the Austin Service Center.

The authority delegated herein may not be redelegated.

Delegation Order No. 209, effective January 9, 1985, is hereby superseded.

Dated: August 9, 1985.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85-21336 Filed 9-5-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 173

Friday, September 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10:00 a.m., Wednesday, September 11, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21366 Filed 9-4-85; 9:04 am]

BILLING CODE 6210-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, September 11, 1985.

LOCATION: Third Floor Hearing Room, 1111-16th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Petroleum Distillates Labeling: Proposed Amendment

The staff will brief the Commission on a draft proposal to revoke the special labeling requirements for products containing petroleum distillates.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Dated: September 3, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-21421 Filed 9-4-85; 1:17 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 12, 1985.

LOCATION: Third Floor Hearing Room, 1111-16th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Methylene Chloride; Meeting With Industry

The Commission will meet with representatives of the chemical industry to discuss the extent of use of methylene chloride in consumer products.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Dated: September 3, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-21422 Filed 9-4-85; 1:17 pm]

BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, September 16, 1985, 2:00 p.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office

Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat (202) 634-6748.

Dated: September 4, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 4, 1985.

[FR Doc. 85-21461 Filed 9-4-85; 3:33 pm]

BILLING CODE 6750-06-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, September 17, 1985, 9:30 a.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTER TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Semi-annual Regulatory Agenda
4. Recommended FY 1986 State and Local Expenditures

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: September 4, 1985.

Cynthia C. Matthews,
Executive Officer.

This Notice Issued September 4, 1985.
[FR Doc. 85-21462 Filed 9-4-85; 3:33 pm]

BILLING CODE 6750-06-M

6**FEDERAL ENERGY REGULATORY COMMISSION**

September 4, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., September 11, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 819th Meeting—September 11, 1985, Regular Meeting (10:00 a.m.)

- CAP-1. Project No. 8399-002, city of Ellensburg, Washington
- CAP-2. Project No. 7678-002 Michiana Hydro-Electric Power Corporation
- CAP-3. Project No. 6967-002, California Hydroelectric
- CAP-4. Project No. 5989-002, the city of Jersey City, New Jersey
- CAP-5. Project No. 4919-004, city of Gillette, Wyoming
Project No. 3749-003, Mitchell Energy Company
Project No. 4210-003, Sls Energenic, Ltd.
Project No. 5006-003, Central Montana Electric Generation and Transmission Cooperative, Inc.
- CAP-6. Project No. 2548-006, Georgia-Pacific Corporation
- CAP-7. Project No. 2969-002, Borough of Weatherly
- CAP-8.

- Project No. 8083-001, Briggs Hydroelectric
- CAP-9. Project No. 7685-005, Fisheries Development Company
- CAP-10. Project No. 9137-001, North American Hydro, Inc.
- CAP-11. Omitted
- CAP-12. Project No. 8438-001, Schaffner Power Company
- CAP-13. Project No. 2874-005, Electric Plant Board of the city of Glasgow, Kentucky
- CAP-14. Project No. 2738-010, New York State Electric & Gas Corporation
- CAP-15. Project No. 2866-004, the Metropolitan Sanitary District of Greater Chicago
- CAP-16. Project No. 4114-001, Long Lake Energy Corporation
Project No. 5614-000 New York State Electric and Gas Corporation and Georgia-Pacific Corporation
- CAP-17. Project No. 2909-001, town of Vidalia, Louisiana
- CAP-18. Project No. 516-021, South Carolina Electric & Gas Company
- CAP-19. Docket No. EL85-36-000, Rhyne Mills, Inc.
- CAP-20. Docket No. ER85-596-000, New England Power Company
- CAP-21. Docket No. ER85-515-003, Florida Power & Light Company
- CAP-22. Docket No. ER85-404-005, Commonwealth Edison Company
- CAP-23. Docket No. ER85-534-003, Southwestern Electric Power Company
- CAP-24. Docket No. QF85-541-000, the city of New Martinsville, West Virginia
- CAP-25. Docket No. QF85-172-001, Power Developers, Inc.
- CAP-26. Docket Nos. RE81-56-001 and 002, Oglethorpe Power Corporation, et al.
- CAP-27. Docket Nos. EL85-11-001, 002 and 003, city of Vernon and the cities of Anaheim, Riverside, Banning, Colton, and Azusa, California v. Southern California Edison Company
- CAP-28. Docket Nos. ER79-182-010, ER80-106-007, ER82-146-011, EL82-16-003 and EL82-27-003, Commonwealth Edison Company
- CAP-29. Docket No. ER84-568-006, Gulf States Utilities Company
- CAP-30. Docket No. ER84-592-000, Indiana & Michigan Electric Company
- CAP-31. Docket No. ER85-184-000, Carolina Power & Light Company
- CAP-32.

- Docket Nos. ER85-194-000 and 001, Southwestern Electric Power Company
- CAP-33. Docket No. ER85-300-000, Vermont Yankee Nuclear Power Corporation
- CAP-34. Docket No. ER85-401-000, Jersey Central Power and Light Company

Consent Miscellaneous Agenda

- CAM-1. Docket No. FA84-15-000, Minnesota Power & Light Company
- CAM-2. Docket Nos. RM79-76-136 (Utah-5) and RM79-76-137 (Utah-6), High-cost gas produced from tight formations
- CAM-3. Docket Nos. RM79-76-240 (Colorado-40) and RM79-76-245 (Colorado-40 addition), high-cost gas produced from tight formations
- CAM-4. Docket No. RM79-76-237 (Texas-40 addition), high-cost gas produced from tight formations
- CAM-5. Docket No. GP85-9-001, Texas Gas Transmission Corporation
- CAM-6. Docket No. GP84-40-001, Mineral Resources Incorporated and Natural Gas Pipeline Company of America
- CAM-7. Docket No. GP84-54-001, Hawthorne Oil & Gas Corporation, Arcade Enterprises, Inc., William B. Burkenhead, Jr. and Republic Production Company of Texas
- CAM-8. Docket No. GP85-41-000, J.R. Simplot Company and Sacramento Bank for Cooperatives
- CAM-9. Docket No. GP84-25-000, JM Resources
- CAM-10. Docket No. GP80-29-004, Gulf Oil Corporation (Florida Gas Transmission Company)
- CAM-11. Docket No. GP85-35-000, United Gas Pipe Line Company
- CAM-12. Docket No. GP85-25-000, Mississippi Fuel Company
- CAM-13. Docket Nos. SA84-8-002, SA84-9-002 and SA84-10-002, Phillips Petroleum Company
Docket Nos. SA84-11-002 and SA84-12-002, Phillips Oil Company
- CAM-14. Docket No. SA82-30-001, Omega Minerals, Inc.
- CAM-15. Docket No. RO84-9-001, Walter J. Scott and Benjamin J. Agajanian, William J. Scott and Walter J. Scott d/b/a Scott Oil Company
- CAM-16. Docket No. RA82-4-000, Placid Oil Refining Company
- CAM-17. Docket No. RA82-25-000, Landsea Oil Company

CAM-18.
Docket No. RA85-1-000, Laketon Asphalt Refining, Inc.

Consent Gas Agenda

CAG-1.
Docket No. ST85-97-001, Phoenix Transmission Company

CAG-2.
Docket Nos. ST85-710-001, ST85-972-001 and ST85-1159-001, Mountain Fuel Resources, Inc.

CAG-3.
Docket No. ST84-725-001, Mississippi River Transmission Corporation

CAG-4.
Docket No. ST84-1014-001, Mississippi River Transmission Corporation

CAG-5.
Docket No. RP84-15-006, MIGC, Inc.

CAG-6.
Docket No. RP85-167-001, Sea Robin Pipeline Company

CAG-7.
Docket No. RP85-37-002, High Island Offshore System

CAG-8.
Docket Nos. RP83-70-001 and RP85-38-001, U-T Offshore System

CAG-9.
Docket Nos. RP85-165-002, 003 and 004, Distrigas of Massachusetts Corporation

CAG-10.
Docket Nos. RP80-97-042 through 048, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-11.
Docket Nos. TA82-1-52-003, TA82-2-52-004, TA83-1-52-002, TA83-2-52-001, TA84-1-52-002 and TA84-2-52-001, Western Gas Interstate Company

CAG-12.
Docket No. TA85-2-61-002, Bayou Interstate Pipeline System

CAG-13.
Docket Nos. TA85-4-17-005 and 006, Texas Eastern Transmission Corporation

CAG-14.
Omitted

CAG-15.
Docket No. TA83-2-47-004, MIGC, Inc.

CAG-16.
Docket No. TA85-1-16-005, National Fuel Gas Supply Corporation

CAG-17.
Omitted

CAG-18.
Omitted

CAG-19.
Omitted

CAG-20.
Docket No. TA85-2-42-003, Transwestern Pipeline Company

CAG-21.
Docket No. TA-83-1-34-000, Florida Gas Transmission Company

CAG-22.
Docket No. TA84-2-21-000, Columbia Gas Transmission Corporation

CAG-23.
Docket No. RP85-187-000, Northwest Pipeline Corporation

CAG-24.
Docket No. RP85-141-002, Texas Gas Transmission Corporation

CAG-25.
Docket No. RP85-18-002, Natural Gas Pipeline Company of America

CAG-26.
Docket No. RP72-132-001, Natural Gas Pipeline Company of America

CAG-27.
(A) Docket No. RP80-136-006, et al., Southern Natural Gas Company
(B) Docket No. RP80-136-007, et al., Southern Energy Company

CAG-28.
Docket No. TA85-2-55-002, Mountain Fuel Resources, Inc.

CAG-29.
Docket No. RP85-8-000, Canyon Creek Compression Company

CAG-30.
Docket No. RP81-52-000, Northern Natural Gas Company, division of Internorth, Inc.

CAG-31.
Docket Nos. ST83-442-001, ST80-299-002, ST83-260-001, ST83-660-000, ST84-29-000, ST84-650-000, ST84-896-000, ST85-126-000, ST82-249-001, ST83-317-001, ST83-678-000, ST84-632-000, ST84-804-000 and ST84-1013-000, Acadian Gas Pipeline System

CAG-32.
Docket No. RI81-4-000, Michigan Wisconsin Pipe Line Company

CAG-33.
Docket Nos. RI74-188-061, RI75-21-056, RI74-188-062 and RI75-21-057, Independent Oil & Gas Association of West Virginia

CAG-34.
Docket No. CI78-704-003, Mitchell Energy Corporation

CAG-35.
Docket No. CI80-151-001, Mitchell Energy Corporation

CAG-36.
Docket No. CI85-283-000, Quinoco Oil & Gas, Inc.

CAG-37.
Docket No. CI78-1179-000, Dorchester Gas Producing Company

CAG-38.
Docket No. CI84-355-000, Exchange Oil & Gas Corporation

CAG-39.
Docket Nos. CP74-314-016, CI83-356-005 and CI84-141-003, El Paso Natural Gas Company and Union Oil Company of California

CAG-40.
Docket No. CI85-476-000, Energy Marketing Exchange, Inc.

CAG-41.
Docket Nos. RP74-50-010, 011, 012, 013 and 014, Florida Gas Transmission Company (Basic Magnesia, Inc.), Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.), Florida Gas Transmission Company (Borden, Inc.) and Florida Gas Transmission Company (Gardiner, Inc.)

CAG-42.
Docket No. CP85-296-001, Florida Cities v. Florida Gas Transmission Company and Houston Natural Gas Corporation

CAG-43.
Docket No. CP85-162-001, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-44.
Docket Nos. CP84-293-000 through 004 and CP84-425-000 through 004, Michigan

Consolidated Gas Company, Interstate Storage Division
Docket Nos. CP77-253-016, 018, 020, 021 and 022, Panhandle Eastern Pipe Line Company

CAG-45.
Docket Nos. CP84-543-001, CP85-150-001 and CP85-151-001, Equitable Gas Company, a division of Equitable Resources, Inc.

CAG-46.
Docket Nos. CP84-132-001 and CP84-196-001, Columbia Gulf Transmission Company
Docket Nos. CP84-132-002, CP84-133-001, CP84-134-001 and CP84-196-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP84-622-001, Transcontinental Gas Pipe Line Corporation

CAG-47.
Docket No. CP85-354-000, Consolidated Gas Transmission Corporation

CAG-48.
Docket No. CP85-295-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-49.
Docket No. CP85-243-000, United Gas Pipe Line Company

CAG-50.
Docket No. CP79-477-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

I. Licensed Project Matters

P-1.
Project No. 2574-000, Milstar Manufacturing Corporation

P-2.
Project Nos. 3024-004, 005, 006, 007, 3029-004, 005, 006 and 007, the city of Richmond, Virginia

P-3.
Project Nos. 77-007 and 008, Pacific Gas and Electric Company

P-4.
Docket No. EL85-41-000, proposed procedure for implementing a review of power project land withdrawals and vacating non-essential withdrawals

II. Electric Rate Matters

ER-1.
Docket No. ER83-138-000 (Phase II), the Cleveland Electric Illuminating Company

ER-2.
(A) Docket No. ER84-579-002, AEP Generating Company
(B) Docket Nos. ER84-348-002, 003, 004 and 005, American Electric Power Service Corporation

ER-3.
Docket No. EL82-3-003 (Remand), city of Oakland, California v. Pacific Gas & Electric Company

ER-4.
Docket No. EL83-19-001, Cliffs Electric Service Company and Upper Peninsula Generating Company
Docket No. EL83-28-000, Colocum Transmission Company, Inc.
Docket No. EL83-30-000, Elkem Metals Company
Docket No. EL83-18-000, Stonington and Deer Isle Power Company

ER-5.

Docket No. ID-2084-000, Donald B. Riefler

Miscellaneous Agenda

M-1.

Docket No. RM82-38-000, fees applicable to electric utilities, cogenerators, and small power producers

M-2.

Docket No. RM83-39-000, list of units of property for use in accounting for additions and retirements of reactor plant equipment

I. Pipeline Rate Matters

RP-1.

Docket Nos. RP85-13-004, 005, 006, RP85-65-001, 002, 003, TA85-2-37-011, 012 and 013 (not consolidated), Northwest Pipeline Corporation

RP-2.

Docket Nos. TA85-1-33-004, TA84-2-33-009 and TA84-1-33-007, El Paso Natural Gas Company

RP-3.

Docket Nos. RP82-71-016, RP82-71-000, TA83-1-59-000, TA84-1-59-000 and TA85-1-59-000, Northern Natural Gas Company, division of Internorth, Inc.

RP-4.

Docket No. TA85-1-53-005, KN Energy, Inc.

RP-5.

Docket No. TA85-2-42-002, Transwestern Pipeline Company

RP-6.

Docket Nos. TA82-1-33-003, TA82-2-33-018, TA83-1-33-010, TA83-2-33-002 and TA84-1-33-001 (unpaid accruals), El Paso Natural Gas Company

II. Producer Matters

CI-1

Reserved

III. Pipeline Certificate Matters

CP-1.

Reserved

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21457 Filed 9-4-85; 3:25 pm]

BILLING CODE 6717-01-M

7**FEDERAL MARITIME COMMISSION****TIME AND DATE:** 10:00 a.m., September 11, 1985.**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.**STATUS:** Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.**MATTERS TO BE CONSIDERED:***Portion Open to the Public*

1. Consideration of proposed circular letter which covers the subject of specific tariff rates which exclude certain classes of shippers.

Portions Closed to the Public

1. Agreement No. 202-010795: West Coast/Western Australia Discussion and Cooperative Working Agreement.

2. Docket No. 85-5—Failure of Non-Vessel Operating Common Carriers in the Foreign Commerce of the United States to Comply

with the Anti-Rebate Certification Filing Requirements of Section 15(b) of the Shipping Act of 1984—Consideration of the Record.

*** CONTRACT PERSON FOR MORE****INFORMATION:** Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-21481 Filed 9-4-85; 4:01 pm]

BILLING CODE 6730-01-M

8**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION****TIME AND DATE:** 10:00 a.m., Thursday, September 26, 1985.**PLACE:** Suite 410, 1825 K Street, NW., Washington, DC.**STATUS:** Because of the subject matter, it is likely that this meeting will be closed.**MATTERS TO BE CONSIDERED:** Discussion of specific cases in the Commission adjudicative process.**CONTACT PERSON FOR MORE****INFORMATION:** Mrs. Mary Ann Miller (202) 634-4015.

Dated: September 3, 1985.

Arthur G. Sapper,

Deputy General Counsel.

[FR Doc. 85-21420 Filed 9-4-85; 1:16 pm]

BILLING CODE 7640-01-M

Great Federal Labor

Friday
September 6, 1985

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas
Decisions to General Wage
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut: CT85-3023	June 7, 1985.
District of Columbia: DC84-3009	Apr. 6, 1984.
Maryland:	
MD84-3039	Nov. 9, 1985.
MD85-3041	July 25, 1985.
Massachusetts:	
MA85-3014	Mar. 15, 1985.
MA85-3015	Do.
New Jersey: NJ85-3001	Aug. 2, 1985.
Texas:	
TX84-4047	Aug. 10, 1984.
TX84-4045	Do.
TX85-4013	May 10, 1985.
TX85-4018	June 14, 1985.
TX85-4019	Do.
Virginia:	
VA84-3006	Mar. 2, 1984.
VA84-3006	July 6, 1984.
VA84-3025	Do.
VA85-3025	May 3, 1985.

Supersedeas Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: CA84-5007 (CA85-5035)	May 18, 1984.
Maryland: MD80-3047 (MD85-3045)	Aug. 29, 1980.
Missouri: MO84-4106 (MO85-4038)	Nov. 30, 1984.
MO84-4102 (MO85-4037)	Oct. 26, 1984.
MO84-4108 (MO85-4032)	Dec. 21, 1984.
NC82-1027 (NC85-3047)	Apr. 30, 1982.
North Carolina:	
NC82-1027 (NC85-3046)	Apr. 30, 1982.
South Carolina: SC82-1050 (SC85-3049)	Sept. 24, 1982.
SC82-1050 (SC85-3048)	Do.
SC79-1016 (SC85-3050)	Feb. 2, 1979.

Signed at Washington, D.C., this 30th day of August 1985.

James L. Valin,
Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

MODIFICATIONS P. 1

DECISION NO. CT85-1023 - MOD. #3 (50 FR 24109 - June 7, 1985) STATESIDE, CONNECTICUT CHANGE: CARPENTERS; MILLWRIGHTS; PILEDRIVERS; LAYERS; RESILIENT FLOOR LAYERS; BUILDING CONSTRUCTION: Area 6: Carpenters, piledriver- men, layers, Resilient floor layers Millwrights	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC84-3029 MOD. #21 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARY- LAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA- INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES CHANGE: IRONWORKERS: Structural, Ornamental. Plumbers: Chain link fence WASHINGTON, D.C.: Apartment buildings over 4 stories: Journeyman All Other Work REMAINING AREAS: 4 stories, schools, col- leges, speculative office buildings, strip shopping centers, churches, water coolers, room air con- ditioning units, appli- ances, packaged ice machines, and light commercial and/or air conditioning systems serving a single build- ing in a single story build- ing and not to exceed 5 h.p. or tons (self- contained package unit up to and including 5 h.p. or tons) Journymen All Other Work SPRINKLER FITTERS: Montgomery and Prince Georges Counties, MD. Remaining Areas	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC84-3029 MOD. #21 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARY- LAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA- INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES CHANGE: IRONWORKERS: Structural, Ornamental. Plumbers: Chain link fence WASHINGTON, D.C.: Apartment buildings over 4 stories: Journeyman All Other Work REMAINING AREAS: 4 stories, schools, col- leges, speculative office buildings, strip shopping centers, churches, water coolers, room air con- ditioning units, appli- ances, packaged ice machines, and light commercial and/or air conditioning systems serving a single build- ing in a single story build- ing and not to exceed 5 h.p. or tons (self- contained package unit up to and including 5 h.p. or tons) Journymen All Other Work SPRINKLER FITTERS: Montgomery and Prince Georges Counties, MD. Remaining Areas	Basic Hourly Rate	Fringe Benefits
DECISION NO. DC84-3039 MOD. #1 (49 FR 44854- November 9, 1984) Baltimore City, Maryland DELETE: LABORERS: Mason Tenders & Mortar Mixers (brick & stone work only) ADD: MASONRY LABORERS: Laborers Mason Tenders Scaffold Builders Forklift Laborers	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC84-3029 MOD. #21 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARY- LAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA- INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES CHANGE: IRONWORKERS: Structural, Ornamental. Plumbers: Chain link fence WASHINGTON, D.C.: Apartment buildings over 4 stories: Journeyman All Other Work REMAINING AREAS: 4 stories, schools, col- leges, speculative office buildings, strip shopping centers, churches, water coolers, room air con- ditioning units, appli- ances, packaged ice machines, and light commercial and/or air conditioning systems serving a single build- ing in a single story build- ing and not to exceed 5 h.p. or tons (self- contained package unit up to and including 5 h.p. or tons) Journymen All Other Work SPRINKLER FITTERS: Montgomery and Prince Georges Counties, MD. Remaining Areas	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC84-3029 MOD. #21 (49 FR 13800-April 6, 1984) DISTRICT OF COLUMBIA, MARY- LAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA- INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES CHANGE: IRONWORKERS: Structural, Ornamental. Plumbers: Chain link fence WASHINGTON, D.C.: Apartment buildings over 4 stories: Journeyman All Other Work REMAINING AREAS: 4 stories, schools, col- leges, speculative office buildings, strip shopping centers, churches, water coolers, room air con- ditioning units, appli- ances, packaged ice machines, and light commercial and/or air conditioning systems serving a single build- ing in a single story build- ing and not to exceed 5 h.p. or tons (self- contained package unit up to and including 5 h.p. or tons) Journymen All Other Work SPRINKLER FITTERS: Montgomery and Prince Georges Counties, MD. Remaining Areas	Basic Hourly Rate	Fringe Benefits
DECISION NO. DC85-3025 MOD. #1 (50 FR 18956-May 3, 1985) BAKFORD ARMY AMMUNITION PLANT, VIRGINIA CHANGE: PLUMBERS & PIPEFITTERS SHEET METAL WORKERS	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC85-3025 MOD. #1 (50 FR 18956-May 3, 1985) BAKFORD ARMY AMMUNITION PLANT, VIRGINIA CHANGE: PLUMBERS & PIPEFITTERS SHEET METAL WORKERS	Basic Hourly Rate	Fringe Benefits	DECISION NO. DC85-3025 MOD. #1 (50 FR 18956-May 3, 1985) BAKFORD ARMY AMMUNITION PLANT, VIRGINIA CHANGE: PLUMBERS & PIPEFITTERS SHEET METAL WORKERS	Basic Hourly Rate	Fringe Benefits
DECISION NO. MA85-3014 MOD. NO. 3 (50 FR 10594 - March 15, 1985) Worcester County, Massachusetts CHANGE: Bricklayers, Cement Masons, Plasterers; and Stone- masons: Area 4 Painters: Area 1 Brush and Tapers Spray and Sandblasting Swing and Chair Work and steel riding under 40 feet Swing and chair work and steel riding 40 feet and over Plumbers & Pipefitters: Area 3 Plumbers Roofers	Basic Hourly Rate	Fringe Benefits	DECISION NO. MA85-3015 MOD. NO. 3 (50 FR 10500 - March 15, 1985) Berkshire, Franklin, Hampden and Hampshire Counties, Massachusetts CHANGE: Bricklayers; Cement masons; plasterers; stoneasons; marble; tile; Terrazzo workers; pointers; Cleaners & chalkers Painters: Brush & Tapers Spray & Sandblasting Swing stage and steel riding under 40' Swing stage and steel riding over 40' Plumbers & Steamfitters: Area 2 Area 3	Basic Hourly Rate	Fringe Benefits	DECISION NO. MA85-3015 MOD. NO. 3 (50 FR 10500 - March 15, 1985) Berkshire, Franklin, Hampden and Hampshire Counties, Massachusetts CHANGE: Bricklayers; Cement masons; plasterers; stoneasons; marble; tile; Terrazzo workers; pointers; Cleaners & chalkers Painters: Brush & Tapers Spray & Sandblasting Swing stage and steel riding under 40' Swing stage and steel riding over 40' Plumbers & Steamfitters: Area 2 Area 3	Basic Hourly Rate	Fringe Benefits
DECISION NO. MA85-3011 MOD. #3 (50 FR 10587-July 25, 1985) SINE ARMOIL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction) HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construc- tion Only) CHANGE: BUILDING POWER EQUIPMENT OPERATOR CLASSIFICATIONS to read BUILDING AND HEAVY POWER EQUIPMENT OPERATOR CLASSIFICATIONS DELETE: MASON TENDERS: Scaffold builders ADD: MASONRY LABORERS: Laborers Mason tenders Scaffold builders Forklift laborer	Basic Hourly Rate	Fringe Benefits	DECISION NO. MA85-3011 MOD. #3 (50 FR 10587-July 25, 1985) SINE ARMOIL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction) HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construc- tion Only) CHANGE: BUILDING POWER EQUIPMENT OPERATOR CLASSIFICATIONS to read BUILDING AND HEAVY POWER EQUIPMENT OPERATOR CLASSIFICATIONS DELETE: MASON TENDERS: Scaffold builders ADD: MASONRY LABORERS: Laborers Mason tenders Scaffold builders Forklift laborer	Basic Hourly Rate	Fringe Benefits	DECISION NO. MA85-3011 MOD. #3 (50 FR 10587-July 25, 1985) SINE ARMOIL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction) HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construc- tion Only) CHANGE: BUILDING POWER EQUIPMENT OPERATOR CLASSIFICATIONS to read BUILDING AND HEAVY POWER EQUIPMENT OPERATOR CLASSIFICATIONS DELETE: MASON TENDERS: Scaffold builders ADD: MASONRY LABORERS: Laborers Mason tenders Scaffold builders Forklift laborer	Basic Hourly Rate	Fringe Benefits

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STATE: CALIFORNIA

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura
DATE: Date of Publication

DECISION NUMBER: CARS-5035

Supersedes Decision No. CARS-5007 dated May 13, 1984, in 49 FR 21145.
DESCRIPTION OF WORK: Building: Heavy (excluding Water Well Drilling and, in Kern County, excluding Oil Well Drilling); Highway: Residential (excluding Inyo and Mono Counties); Dredging

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
\$23.06	\$5.45	CARPENTERS (Cont'd):	
21.60	4.25	Area 1 (Cont'd):	
17.25	4.00	Work on single family homes and apartments up to and including 3 stories:	
16.05	4.00	Framer and Finish Carpenter	
19.09	3.59	Insulator Installer	
17.99	4.31	Slab on grade	
20.75	3.52	concrete construction excluding subterranean garages)	
19.75	3.95	Area 2:	
17.40	4.56	Cement Masons	
19.42	4.86	Cement Floating and Troweling Machine	
20.50	3.22	Area 3:	
21.74	4.31	Cement Masons	
14.07	8.18	Cement Floating and Troweling Machine	
		Area 4:	
		Cement Masons	
		Cement Floating and Troweling Machine	
		DIVERS*: Diver, Wet	
		Diver, Stand-by	
		Diver, Tender	
		DRYWALL INSTALLERS/LATHERS: Inyo, Kern and Mono Counties	
		Remainder of Counties:	
		Drywall Installer/Lather	
		Drywall Stocker, Scraper and Clean-up	
		Residential Drywall/Lather	
		ELECTRICIANS:	
		Area 1:	
		Electricians	
		Cable Splicers	
		Sound Installers	

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Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
\$16.29	\$3.395	ELECTRICIANS (Cont'd):	
17.145	3.395	Area 1 (Cont'd):	
		Utility Technicians (covers street lights, traffic signals, and underground systems in streets and/or established easements)	
		Area 2:	
		Electricians	
		Cable Splicers	
		Residential Electrician	
		Area 3:	
		Electricians	
		Cable Splicers	
		Sound Technician	
		Alarm Technician	
		Area 4:	
		Electrician	
		Cable Splicer	
		Alarm Technician	
		Area 5:	
		Electrician	
		Cable Splicers	
		Area 6:	
		Contracts over \$2 million:	
		Electricians	
		Cable Splicer	
		Contracts \$2 million and under:	
		Electricians	

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Basic Hourly Rate	Range Benefits	Basic Hourly Rate	Range Benefits
ELECTRICIANS (Cont'd):			
Area 10:			
Contracts over \$250,000 with a main electrical service over 1200 amps:	3%		
Electricians		\$36.42	\$4.35+
Cable Splicers		27.92	4.35+
Contracts of \$250,000 or less with a main electrical service of 1000 amps or less:	3%		
Electricians		21.75	4.35+
Cable Splicers		23.55	4.35+
Work on single family homes and apartments 3 stories or less	3%	11.46	4.35+
Area 11:			
Electricians		20.90	4.55+
Cable Splicers		22.62	4.55+
Residential Electrician		13.00	2.00+
ELEVATOR CONSTRUCTORS:			
Area 1:			
Mechanics		23.14	3.25+
Helpers		16.20	3.25+
Probationary Helpers		11.37	
Area 2:			
Mechanics		29.39	3.25+
Helpers		20.37	3.25+
Probationary Helpers		14.655	
GAZING:			
Area 1:			
Area 1		13.39	6.21
Area 2		17.97	3.15
Area 3		16.90	5.82
IRONWORKERS:			
Fence Erectors		18.01	8.93
Ornamental, Reinforcing, Structural		18.90	8.93
SPRINKLERS		15.00	3%
LINE CONSTRUCTION:			
Area 1:			
Ground		17.41	3.65+
			4.48

Basic Hourly Rate	Prime Benefits	LINE CONSTRUCTION (Cont'd)	Basic Hourly Rate	Prime Benefits
\$22.61	\$3.65+	Area 1 (Cont'd): Line worker	\$28.95	\$3.15+
22.91	3.65+	Cable Splicers	48	48
12.86	4.40+	Area 2: Ground	16.61	4.40+
17.15	4.40+	Line worker; Heavy Equipment Operator	20.90	4.40+
18.87	4.40+	Cable Splicers	22.62	4.40+
23.00	5.05+	Area 3: Line worker	17.78	3.15+
23.60	5.05+	Cable Splicers	23.70	3.15+
17.25	5.05+	Ground	25.20	3.15+
18.22	4.70+	Area 4: Line worker	18.50	2.95
18.17	4.75+	Area 5: Cable Splicer	20.75	3.52
17.67	4.75+	Equipment Operator	19.75	3.95
13.25	4.75+	Ground	20.50	3.22
17.67	4.75+	Line worker	17.69	4.66
16.67	3.58+	Area 6: Ground	18.37	4.67
22.23	3.58+	Line workers; Line truck and equipment operators	18.87	4.67
24.45	3.58+	Cable Splicers	19.37	4.67
15.75	5.27+	Area 7: Ground	18.62	4.67
21.00	5.27+	Line worker	20.01	4.67
23.10	5.27+	Cable Splicers	18.67	4.68
21.53	3.15+	Area 8: Ground	18.79	4.68
27.45	3.15+	Line worker; Equipment operator	18.92	4.68
	48		19.04	4.68

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Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
19.17	4.68	19.17	4.68	19.17	4.68	19.17	4.68
19.92	4.69	19.92	4.69	19.92	4.69	19.92	4.69
19.94	4.68	19.94	4.68	19.94	4.68	19.94	4.68
15.00	4.12	15.00	4.12	15.00	4.12	15.00	4.12
15.50	4.12	15.50	4.12	15.50	4.12	15.50	4.12
16.00	4.12	16.00	4.12	16.00	4.12	16.00	4.12
16.50	4.12	16.50	4.12	16.50	4.12	16.50	4.12
17.00	4.12	17.00	4.12	17.00	4.12	17.00	4.12
18.57	4.14	18.57	4.14	18.57	4.14	18.57	4.14
18.82	4.14	18.82	4.14	18.82	4.14	18.82	4.14
19.07	4.14	19.07	4.14	19.07	4.14	19.07	4.14
19.22	4.14	19.22	4.14	19.22	4.14	19.22	4.14
19.57	4.14	19.57	4.14	19.57	4.14	19.57	4.14
19.32	4.14	19.32	4.14	19.32	4.14	19.32	4.14
20.32	4.14	20.32	4.14	20.32	4.14	20.32	4.14
20.82	4.14	20.82	4.14	20.82	4.14	20.82	4.14
21.82	4.14	21.82	4.14	21.82	4.14	21.82	4.14
14.83	2.00+b	14.83	2.00+b	14.83	2.00+b	14.83	2.00+b
14.30	2.00+b	14.30	2.00+b	14.30	2.00+b	14.30	2.00+b

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TRUCK DRIVERS:

Basic Monthly Rate	Range Monthly Rate	Range Monthly Rate
POWER EQUIPMENT OPERATORS:		
DREDGING:		
Hydraulic Section Dredges:		
Lever operator	\$19.10	\$7.35
Deckster, Watch Engin-		
ner Welder	18.77	7.35
Winch (Stern winch on		
dredge)	18.22	7.35
Bargehand; Deckhand:		
Firefighter; Oilier:		
Leveehand	17.68	7.35
Docker	18.88	7.35
Clamshell Dredges:		
Lever operator	19.35	7.35
Deckster; Watch Engineer	18.77	7.35
Barge Mate	18.29	7.35
Bargehand; Deckhand:		
Firefighter; Oilier	17.68	7.35
POWER EQUIPMENT OPERATORS:		
Group 1	17.50	7.35
Group 2	17.78	7.35
Group 3	18.07	7.35
Group 4	18.21	7.35
Group 5	18.43	7.35
Group 6	18.54	7.35
Group 7	18.66	7.35
Group 8	18.83	7.35
Group 9	18.96	7.35
Ironworkers (Cont. from the		
right side of the page):		
City Hall; City Hall of		
Sakarsfield; El Centro;		
Burbank; Fresno; Los		
Angeles; Napa; Oakland;		
Redding; Sacramento;		
San Bernardino; San		
Diego; San Francisco;		
San Jose; Stockton and		
Ventura.		

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FOOTNOTES:

- a. Employer contributes 8% of basic hourly rate for over 5 years' service and 4% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day.
- b. Employer contributes \$.80 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years; \$.13 per hour to Vacation Fund, 5 years but less than 10 years; \$.48 per hour to Vacation Fund, over 10 years; \$.83 per hour to Vacation Fund.

*DIVERS AND *IRONWORKERS, SEE PAGE 5.

*BRICKLAYERS: STONEMASONS:

- Area 1: Imperial County
- Area 2: Inyo, Kern, and Mono Counties (excluding Edwards AFB and China Lake Naval Weapons Center)
- Area 3: Los Angeles County
- Area 4: Riverside and San Bernardino Counties
- Area 5: Santa Barbara and San Luis Obispo Counties
- Area 6: Ventura County
- Area 7: Orange County
- Area 8: Edwards Air Force Base and China Lake Naval Weapons Center

CARPENTERS:

- Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
- Area 2: Remaining Counties

CEMENT MASONS:

- Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
- Area 2: Remaining counties

ELECTRICIANS:

- Area 1: Imperial County
- Area 2: Kern County (Remainder of County)
- Area 3: Los Angeles County
- Area 4: Orange County
- Area 5: Riverside County
- Area 6: Inyo, Mono, and San Bernardino Counties
- Area 7: San Luis Obispo County
- Area 8: Santa Barbara (Remainder of County)
- Area 9: Ventura County
- Area 10: Point Arguello and Vandenberg Air Force Base
- Area 11: China Lake Naval Ordnance Test Station and Edwards Air Force Base

ELEVATOR CONSTRUCTORS:

- Area 1: Imperial and Inyo Counties; Kern County (south of Tehachapi Range); Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
- Area 2: Kern County (north of Tehachapi Range)

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AREA DESCRIPTIONS (Cont'd)

GLAZIERS:

- Area 1: Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties
 Area 2: Imperial County
 Area 3: Inyo, Kern, Mono and San Luis Obispo Counties

LINE CONSTRUCTION:

- Area 1: Imperial County
 Area 2: Kern County of County)

- Area 3: Los Angeles County
 Area 4: Inyo, Mono, and San Bernardino Counties
 Area 5: Riverside County
 Area 6: San Luis Obispo County
 Area 7: Ventura County
 Area 8: Point Arguello and Vandenberg Air Force Base
 Area 9: China Lake Naval Ordnance Test Station and Edwards Air Force Base
 Area 10: Santa Barbara (Remainder of County)

MARBLE SETTERS: (4 areas)

- Area 1: Imperial County; Area 2: Los Angeles County; Area 3: Riverside and San Bernardino County; Area 4: Orange County
 MARBLE AND TILE SETTERS: Bernardino County; including the Channel Islands of Santa Barbara County

MARBLE FINISHERS:

- Area 1: Imperial County

MARBLE AND TILE FINISHERS:

- Area 1: Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties

PAINTERS:

- Area 1: Imperial, Orange, and Riverside Counties; Los Angeles County (Pomona Area); San Bernardino County (excluding western portion)
 Area 2: Inyo County; Los Angeles County (except Pomona Area); Mono County; San Bernardino County (west of a line north of Trono including China Lake Area, Johnsbury, Boron, south including the Wrightwood Area); Kern County East of the Los Angeles Aqueduct
 Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)
 Area 4: San Luis Obispo, Santa Barbara, and Ventura Counties

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AREA DESCRIPTIONS (Cont'd)

PLASTERERS:

- Area 1: Los Angeles and Orange Counties
 Area 2: Imperial, Riverside, and San Bernardino Counties
 Area 3: San Luis Obispo County
 Area 4: Santa Barbara County
 Area 5: Ventura County
 Area 6: Kern, Inyo, and Mono Counties

PLASTERERS' TENDERS:

- Area 1: Imperial, Inyo, Mono, Riverside, and San Bernardino Counties
 Area 2: Kern County
 Area 3: Los Angeles and Orange Counties
 Area 4: San Luis Obispo and Santa Barbara Counties
 Area 5: Ventura County
 Area 6: China Lake Naval Ordnance Test Station and Edwards Air Force Base

PLUMBERS: STEAMPITTERS:

- Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
 Area 2: Inyo, Kern, and Mono Counties
 Area 3: Edwards Air Force Base, Naval Weapons Center and China Lake Naval Ordnance Test Center

REPAIRERS AND AIR CONDITIONING:

- Area 1: Los Angeles and Orange Counties
 Area 2: Riverside and San Bernardino Counties

ROOFERS:

- Area 1: Imperial County
 Area 2: Inyo, Kern, and Mono Counties
 Area 3: Riverside and San Bernardino Counties
 Area 4: Los Angeles, Orange, and Ventura Counties
 Area 5: San Luis Obispo and Santa Barbara Counties

SHEET METAL WORKERS:

- Area 1: Imperial County
 Area 2: Kern County and all of Inyo and Mono Counties; Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)

- Area 3: Los Angeles County (Remaining portion)

- Area 4: Orange County

- Area 5: Riverside and San Bernardino Counties

- Area 6: San Luis Obispo, Santa Barbara, and Ventura Counties

- Area 7: Edwards Air Force Base and China Lake Naval Weapons Base

SOFT FLOOR LAYERS:

- Area 1: Imperial County
 Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino, and Ventura Counties

*SEE ZONE DEFINITIONS ON PAGE 9 AT THE BOTTOM.

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AREA DESCRIPTIONS (Cont'd)

SPRINKLER FITTERS:

- Area 1: Imperial, Inyo, Kern, and Mono Counties, Orange County (except Santa Ana), Riverside County, San Bernardino County (except Ontario); San Luis Obispo, Santa Barbara and Ventura Counties
 Area 2: Los Angeles City and Area within 25 miles and Pomona Area; Orange County (Santa Ana); San Bernardino County (Ontario); and Ventura County (Santa Paula, Point Mugu and Port Puenente)

TERRAZZO WORKERS:

- Area 1: Imperial County
 Area 2: Remaining Counties

TILE SETTERS:

- Area 1: Imperial County
 Area 2: Los Angeles, Orange, and Ventura Counties
 Area 3-A: Riverside and San Bernardino Counties (excluding Fort Irwin Training Center, 25 Palms Marine Base, and China Lake Naval Base)
 Area 3-B: Fort Irwin, 25 Palms Marine Base, and China Lake Naval Base
 Area 4-A: Inyo, Kern and Mono Counties (excluding China Lake Naval Weapons Center and Edwards Air Force Base)
 Area 4-B: China Lake Naval Weapons Center and Edwards Air Force Base
 Area 5: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties

LABORERS:

- Area 1: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg Air Force Base
 Area 2: Remainder of Counties

LABORERS
AREAS 1 and 2

Group 1: Cleaning and Handling of Panels Forms: Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry packing of concrete, plugging, filling of steel-bolt holes; Fire Watcher, timber, brush loaders, fillers and debris handlers; Gas, oil and/or water pipeline laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, tamping, temporary water and air lines; Material hose operator; (walls, slabs, floors, and decks); Rigging and Signaling; Scaffolding; Slip Form Raisers; Slurry Seal Crews (Water Operator, Applicator Operator, Squeegee operator, Shuttle, Tool); Stripper, Concrete or other paved surfaces; Tar and Mortar; Tool Crib or Tool House Laborer; Traffic Relinquishing Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

PLUMBERS: STEAMFITTERS (FROM PAGE 8):

- Area 1:
 Zone Definitions:
 Zone 1: Remainder of Area
 Zone 2: Camp Pendleton, Camp Roberts, Edwards Air Force Base, George Air Force Base, Vandenberg Air Force Base
 Zone 3: Fort Irwin Army Base, Marine Corps Logistic Base at Meco, Marine Corps Logistic Base at Yermo, Nicolson Island Naval Base, 25 Palms Marine Base

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LABORERS (Cont'd)
AREAS 1 and 2 (Cont'd)

Group 2: Asphalt Shovelers; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Wheelbarrow Digger and Installer; Chockender; Chute handler, pouring concrete, the handling of the chute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters, and sidewalks; Concrete Curer, impervious Membrane and Form Oiler; Cutting Torch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, oil and/or water pipeline wrapper; Pot tender and form; Guinea Chaser; Headboard, asphalt; Laborer, packing rod steel studs or wet packed concrete; Roto Scraper and Tiller; Sandblaster (pot tender); Septic Tank Digger and Installer (Lead); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chigger and similar type brush shredders; Underground Laborer, including Calson Sellow

Group 3: Asphalt Baker, Lute, Ironer and Asphalt Spreader Boxes (all types); Buggymobiles; Concrete Core Cutter, grinder of sanders; Concrete Cutting Torch; Concrete Saw, cutting, securing old or new concrete; Driller, Jackhammer, 2 1/2 ft. drill steel or longer; Dri Pak-it Machine; Gas, oil and/or water pipeline wrapper, 6" pipe and over, by any method, inside and out; Hydro Sealer and similar type Impact Wrench Multi-plate; Kettle, pot, and asphalt applicators; Lay-kold, concrete, pipe caustic and similar type materials; "applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing; Operators of pneumatic, gas, electric tools; Vibrating Machines; Pavement Breakers; Air Blasting, Come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's Sackbag coating, grouting, making of joints, sealing, caulking, dispersing and including Rubber Gasket Joints, pointing and any and all other services; Rock Slinger; Rotary Scarifier or Multiple Head Concrete Chipping Scarifier; Steel Headboard and Guideline Setter; Tappers, Barke, Wacker, and similar type; Trenching Machine, hand propelled

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, hand-guided Lapping Hammer; Head Rock Slinger; Laser Beam; Over-size Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzle, water blasting; Welding in connection with Laborers' work

Group 5: Blaster Powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller; All power drills, including Jackhammer, weather Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

GUNNITE

Group 1: Nozzle and Rod

Group 2: Gun

Group 3: Rebound

(18)

LABORERS (Cont'd)

TUNNEL

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trach; Concrete Crew, including Rodders and Spreaders; Changehouse; Dump (outside); Swamper (Brake and Switch on tunnel work); Tunnel materials handling; Tool

Group 2: Cable Tender; Check Tender; Skipper; Steel Form Raiser and Setter's Tender; Vibrator operator; Jackhammer; pneumatic tools (except Driller); Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Blaster, Driller, Powder, Chemical Grout Jet, Cherry Picker, Grout Gun, Grout Mixer, Grout Pump, Jackleg Miner, Jumbo, Karper and other pneumatic concrete placer Operator; Miner, tunnel (hand or machine); Powder (Primer Souser); Riser; Shotcrete; Steel Form Raiser and Setter; Timber; Estimator (wood or steel); Tunnel Concrete Finisher; Nozzle; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

POWER EQUIPMENT OPERATORS

Group 1: Brake, Compressor (less than 600 C.F.M.); Engineer; Oilier; Generator; Heavy Duty Repair; Tender; Pump; Signal; Switch

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, Skip type, Conveyor; Firefighter; Hydrostatic Pump; Oilier Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or compressor; Rotary Drill Slinger (Oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Firefighter; Temporary Heating Plant; Trenching Machine Oilier; Truck Crane Oilier

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (track); Ford Ferguson (with dragtype attachments); Helicopter Radio (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Sifter; Road Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Firefighter; Boring Machine; Box or silver (asphalt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinky Locomotive or Motor (up to and including 10 tons); Equipment Greaser (Greaser Truck); Helicopter Bolster; Highline Cableway Signal; Hydra-Summer; Aero Stomper; Power Sweeper; Roller (compacting); Scream (asphalt or concrete); Trenching Machine (up to 6 feet)

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POWER EQUIPMENT OPERATORS (Cont'd)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Spreader; Concrete Joint Machine (canal and similar type); Concrete Placer; Deck Engineer; Derrick (oil-field type); Drilling Machine Operator; Derrick (canal lift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Magnin's Internal Pull Slab Vibrator; Mechanic Bars, Curb or Gutter (asphalt or concrete); Mechanical Finisher (Concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skip-loader (Crawler and wheel type, over 3/4 yard and up to and including 1 1/2 yds.); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Taper Scraper (single engine, up to 100 HP, flywheel and similar types, up to and including D-5 and similar types); Tugger Bolster, 1 drum; Tunnel Locomotive (over 10 tons up to and including 30 tons); Welder-General

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gomite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator (up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repair; Moist Operator (Chicago Boom and similar type); Molson Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Wayborg and similar types); Loader (Athley, Euclid, Sierra and similar type); Material Bolster; Mucking Machine (1/4 yard rubber tired, rail or track or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpillar, Euclid, Athley Wagon and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skip-loader (Crawler and wheel type, over 1 1/2 yds., up to and including 6 1/2 yds.); Surface Heaters and Planer; Trenching Machine (over 5 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel HP and over, or similar); Bulldozer, Taper, Scraper and Push Tractor (single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Classshell (over 3/4 yd. and up to 5 cu. yds. M.B.C.) (Long-boom pay applicable); Self-propelled Curb and Gutter Machine

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POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Crane, over 25 ton up to and including 100 tons M.R.C. (long-boom pay applicable); Derrick Barge (long-boom pay applicable); Dual Drum Mixer; Heavy Duty Repair; Welder combination; Hoist, Stiff-legs, Guy Derrick or similar type, up to and including 100 tons (long-boom pay applicable); Monorail Locomotive (diesel, gas or electric); Motor Patrol-Blade Operator (single engine); Multiple Engine Tractor (diesel and similar types, except Ford 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards, straddle); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar) (over 25 yards and up to 50 cu. yds. straddle); Shovel, Backhoe, Dragline, Crawler (over 5 cu. yds. M.R.C.) (long-boom pay applicable); Towar Crane Repair; Tractor Loader (Crawler and wheel type, over 64 yards); Welder, certified; woods Mixer and similar Pugnill Equipment

Group 8: Auto Grader; Automatic Slip Form Crane-over 100 tons (long-boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more) (long boom pay applicable); Mass Excavator, less than 750 cu. yds.; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine; Pipe Mobile Machine; Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. straddle); Rubber-tired self-loading Scraper (paddle wheel, asper type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push City Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem tractor (used 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; High-line Cableway; Remote Controlled Earth Moving Equipment (\$1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yds.)

TRUCK DRIVERS

Teamster

Group 1: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than 8 tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Boot, Cement Distributor; Fuel Truck; Water Truck, 2 axle

(21)

TRUCK DRIVERS (Cont'd)

Group 6: Dump, less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 64 yards

Group 8: Truck Repair; Helper

Group 9: Water Truck, 3 or more axles

Group 10: PS and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working truck including Winch, but limited to truck applicable to Pipeline and Utility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tire (50¢ per hour additional for tire)

Group 11: Transit-Mix, 3 yards or more; Dumpcrete, 64 yards and over

Group 12A: Driver of vehicle or combination of vehicles of 4 or more axles

Group 12B: Driver of oil spreader truck

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame or Swedish Crane, or similar type of equipment Driver; Fork Lift Driver; Ross Carrier, Highway

Group 15: All off-highway equipment within Teamsters' jurisdiction (off highway combination of vehicles or equipment with multiple power sources, \$1.00 per hour additional); Dump, 25 yds. or more; Truck Repair

Group 16: Truck Repair; Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

(22)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NO.: MD 85-3045

SUPERSEDES DECISION

STATE: MARYLAND
 DECISION NO.: MD 85-3045
 SUPERSEDES DECISION NO.:
 MD 80-1947, dated August 29, 1980, in 45 FR 57922
 DESCRIPTION OF WORK: Heavy and Highway Construction

COUNTIES: Allegany and Garrett
 DATE: Date of Publication

HEAVY AND HIGHWAY CONSTRUCTION

	Basic Hourly Rate	Fringe Benefits
BRICKLAYERS	15.34	1.55
CARPENTERS	14.26	3.74
CEMENT MASONS	16.10	1.50
ELECTRICIANS	15.00	3.50+
Allegany County		3.75+
Garrett County	15.40	3.75+
IRONWORKERS: Structural and Reinforcing	15.60	3.55
LABORERS:		
Water Boy	10.20	3.70
Laborer, handy man, tool checker, dumpman, spotter, landscape wkr.	10.45	3.70
Power tool operator, mason & plaster tender, mortar mixer by hand, machine, scaffold build-er, hod carrier, concrete poddler, pipelayer, rammer, grade checker, turner, asbestos worker, burner, barco tamper	10.61	3.70
Blaster/dynamite, diamond bit driller, air track driller, Tunnel workers, caisson, driller, mucker, Gunite work: Mortelman, gun operator, ground lab.	10.61	3.70
LINEMEN-Allegany and Garrett (East of the 215 at the Lake)	10.83	3.70
Lineman	11.47	3.70
Equipment Operator	15.00	3.50+
Truck Driver, Groundmen	14.25	3.75+
LINEMEN-Garrett (West of Pte. 215 at the Lake)	9.75	1.50+
Lineman	15.40	3.50+
		3.75+

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HEAVY AND HIGHWAY CONSTRUCTION CLASSIFICATIONS

- Group 1 - Operators handling or setting steel stone, pre-stressed concrete or machinery tower cranes.
- Group 2 - Backfiller, backhoe, concrete mixing plant, batching plants, cable way, derrick boat derrick, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard gauge locomotive trenching machine, tunnel mucking machine, whirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over 4 welders top scale (more than 8, another man), Elanco type overhead loader, wellpoint system, mighty mixer with compressor, equipment for road, twin engine scraper (25 yds. & over), mechanic, mechanic's welder, grader, all bulldozers, tire maintenance truck.
- Group 3 - Tractor with attachments (2 or more), front end loader (up to and including 2 yds.)
- Group 4 - Concrete mixer, concrete pump, one drum hoist, narrow gauge locomotive, power roller, asphalt spreader, pumps (not exceeding 4), single well drill, engine driven welders (not exceeding 4), single compressors (over 210 C.F.M.), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, excavating scoop, finishing machine full float, longitudinal float, screeding machine, concrete spreader, sub grader.
- Group 5 - Fireman, truck crane oiler, wheel tractor, grease truck operator.
- Group 6 - Oiler, greaser, mechanic's helper, single compressor, over 180 C.F. and up to 210 C.F.M.

TRUCK DRIVER CLASSIFICATIONS

- Group 1 - Dumpers
- Group 2 - Pick-ups, dump trucks (under 5 yds., capacity), straight trucks.
- Group 3 - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds. capacity), Transit mix, dumps (5 to 9 yds. capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing a pushing flatbody vehicles), form trucks, dispatchers, yardmen.
- Group 4 - Dump trucks (10 to 15 yd. capacity)
- Group 5 - Dump trucks (over 15 yd. capacity), bottom and end dump scolds, all other scold type trucks, turnarounds, rous carriers, alley wagons, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumptrucks or batch trucks, specialized earth moving equipment, Off-highway tandem back-dump, twin engine equipment & double hitched equipment (where not self-loaded).
- Group 6 - All equipment listed in Group 5 over 49 tons to 59 tons.
- Group 7 - All equipment listed in Group 5 over 59 tons.

(24)

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398</
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Counties: Cass, Clay, Jackson, Platte,
Ray, Neely, Johnson, & Lafayette Cos.,
Missouri; Johnson & Wendotte Cos.,
Kansas

PROJECTS LOW NO: 8025-4038

PRECISION NO: 8035-4038
 DATE: Date of Publication
 SUPERSEDES Decision No. 3084-4106 dated December 30, 1984 in 47 PR 47157.
 CLASSIFICATION OF WORK: Building Projects (excluding single family homes and
 apartments up to and including 4 stories) and heavy and highway construction
 in Johnson & Washington Counties, Kansas Only.

DATE: _____ Date of Publication _____

[illegible]

DECISION NO. 9015-4038

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Building Construction:		
Zone 1-Cass, Clay, Jackson, Platte Cos., Mo., Johnson & Wyandotte Cos., Kansas:		
Group 1	12.55	2.50
Group 2	12.70	2.50
Group 3	12.85	2.50
Zone 2-Lafayette & Ray Cos., Mo.:		
Group 1	11.55	2.50
Group 2	11.70	2.50
Group 3	11.85	2.50
Zone 3-Henry & Johnson Cos., Mo.:		
Group 1	10.075	3.10
Group 2	10.175	3.10
Group 3	10.40	3.10
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 4-Johnson & Wyandotte Cos., Kansas:		
Group 1	13.02	3.60
Group 2	13.82	3.60
Line Construction:		
Zone 1-Cass, Clay, Jackson, Platte & Ray Cos., Mo.; Wyandotte & Johnson Cos., Kansas:		
Linsmen	18.33	844+
Linsmen operator	17.10	844+
		1.25
Groundman powderman	12.84	844+
		1.25
Groundman	12.23	844+
		1.25
Zone 2-Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Cos., Mo.; Wyandotte Co. & Johnson Co.-that portion east of West-Cello, Oklahe & Spring Hill Townships, Kansas:		
Line Construction (Telephone & telegraph work including C.A.T.V. work):		
Cable Splicers: air pressure technicians:		
central office equipment man	10.96	344+ .45
Telephone lineman & installer repairman:		
C.A.T.V. terminator:		

1900

Line Construction Cont'g's		
Line 1-Equipment operator		
1 1/2 yd. backhoe & larger		
& D-4 crawlers & larger		
Equipment operator		
(tractors & all other		
equipment)		
Groundman-winch driver		
Groundman		
Line Construction (Rail-		
road & Cross Country		
Transmission Lines):		
Line 1-Wyandotte Co. &		
Johnson Co.-that portion		
east of Monticello,		
Olathe & Spring Hill		
Townships:		
Line 1-		
Libman		
Libman operator		
Groundman, powderman		
Groundman		
Pole Treating:		
Pole treating special-		
list		
Pole treating Inspector		
Pole treating truck		
driver		
Pole treating ground-		
man		
Line 1-Cass, Clay, Henry,		
Jackson, Johnson (see		
Cluding Whitman AFB),		
Lafayette, Platte & Ray		
Cos., No. 1-Johnson &		
Wyandotte Cos., Kansas:		
Brush & tapers		
Spray		
Line 2-Johnson Co., No.		
Whitman AFB Only):		
Brush		
Spray		
Line 1-Cass, Clay, Jack-		
son, Lafayette, Platte &		
Ray Cos., No. 1-Johnson		

CLASSIFICATIONS DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: (Site Preparation - Cont'd):

Group IV:

Oilers

Other driver (all types)

FOOTNOTES:

BRIEFLY PREVIOUS

FOLLOWING CLASSIFICATIONS SHALL RECEIVE (S.35) ABOVE GROUP I RATE

Classified 3 yd. capacity or over - crane or rig, 90 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over.

TRUCK DRIVERS (Building Construction):

Group I - Warehousemen and stock man

Group II - Flat beds; pick-ups; drum trucks, under 10 yds.

Group III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers

Group IV - Straddle trucks, wheel tractors (when used for towing); hydro lift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)

Group V - Distributor truck drivers and operators; oilers, greasers

Group VI - Mechanics; transit mix tractor trailer

Group VII - Transit mix, 5 yds. and over

Group VIII - Transit mix, under 5 yds.

TRUCK DRIVERS: (Site Preparation)

GROUP I

Mechanics & welders -field

GROUP II

A-frame low boy - boom truck driver

GROUP III

Inlay wagons; dump trucks, excavating, 5 cu. yds and over; dumpsters; half-tracks; speeders; euclids and similar excavating equipment

Material trucks, tandem two teams, semi-trailers, wheel tractors, fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi

GROUP IV

One team; station wagons; pickup truck; material trucks, single axle

Tank wagon drivers, single axle

GROUP V

Oilers; greasers -field

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SUPERSEDES DECISION

STATE: Missouri & Kansas

COUNTIES: Cass, Clay, Jackson, Platte & Ray Missouri; Johnson & Wyandotte, Kansas

DECISION NO.: MO85-4037

DATE: Date of Publication

Supersedes Decision No. MO84-4102, dated October 25, 1984 in 49 FR 41176.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including 4 stories.

Basic Hourly Rate	Prime Benefits
17.29	4.85
17.345	3.25
16.54	3.00
14.55	2.07
15.995	2.38
16.18	10%+ 3.01
14.58	10%+ 3.01
17.445	3.29+ 3.01
70.42	3.29+ 3.01
50.42	3.56+ 3.01
14.665	17.148
17.51	17.37
12.55	2.50
12.70	2.50
12.85	2.50
11.55	2.50
11.70	2.50
11.85	2.50
13.02	3.60
13.82	3.60

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CLASSIFICATION DEFINITIONS

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
16.55	10%	16.55	10%
14.40		14.40	
15.54	1.00	15.54	1.00
16.54	1.00	16.54	1.00
18.05		18.05	
17.56	3.32	17.56	3.32
15.02	2.70	15.02	2.70
15.86	2.85	15.86	2.85
15.54	2.85	15.54	2.85
19.45	2.85	19.45	2.85
13.61	2.85	13.61	2.85
11.25	2.85	11.25	2.85
13.86	2.85	13.86	2.85
16.11	2.85	16.11	2.85
15.76	2.85	15.76	2.85
16.36	2.85	16.36	2.85
15.71	2.85	15.71	2.85
13.46	2.85	13.46	2.85
16.85	2.85	16.85	2.85
15.16	2.85	15.16	2.85
14.35	4.07	14.35	4.07
13.65	4.07	13.65	4.07
9.63	4.07	9.63	4.07
12.65	4.07	12.65	4.07
14.85	4.07	14.85	4.07
16.48	2.91	16.48	2.91
18.75	2.91	18.75	2.91
17.88	1.67	17.88	1.67
19.28	3.21	19.28	3.21
TERRAZZO WORKERS:		TERRAZZO WORKERS:	
Terrazzo Workers		Terrazzo Workers	
Terrazzo Finishers		Terrazzo Finishers	
Terrazzo Base Machine Operator		Terrazzo Base Machine Operator	
TRUCK DRIVERS:		TRUCK DRIVERS:	
(ZONE I)		(ZONE I)	
GROUP I		GROUP I	
GROUP II		GROUP II	
GROUP III		GROUP III	
GROUP IV		GROUP IV	
GROUP V		GROUP V	
GROUP VI		GROUP VI	
GROUP VII		GROUP VII	
GROUP VIII		GROUP VIII	
TRUCK DRIVERS:		TRUCK DRIVERS:	
Site Preparation & Grading, Johnson & Wyandotte Counties, Kansas; site preparation, incidental paving & utilities Clay, Jackson, Platte & Ray Cos., Missouri (ZONE 2)		Site Preparation & Grading, Johnson & Wyandotte Counties, Kansas; site preparation, incidental paving & utilities Clay, Jackson, Platte & Ray Cos., Missouri (ZONE 2)	
GROUP I		GROUP I	
GROUP II		GROUP II	
GROUP III		GROUP III	
GROUP IV		GROUP IV	
GROUP V		GROUP V	
FOOTNOTES:		FOOTNOTES:	
a - Employer contributes 8% of basic hourly rate for over 5 years of service & 5% of basic hourly rate for 5 mos. to 5 years service as Vacation Pay Credit. Also 7 paid holidays A thru G.		a - Employer contributes 8% of basic hourly rate for over 5 years of service & 5% of basic hourly rate for 5 mos. to 5 years service as Vacation Pay Credit. Also 7 paid holidays A thru G.	
PAID HOLIDAYS:		PAID HOLIDAYS:	
1-Christmas Day, 5-New Year's Day, 6-Labor Day, 7-Memorial Day, 8-Independence Day, 9-Thanksgiving Day, 10-Day after Thanksgiving Day		1-Christmas Day, 5-New Year's Day, 6-Labor Day, 7-Memorial Day, 8-Independence Day, 9-Thanksgiving Day, 10-Day after Thanksgiving Day	

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LABORERS: Building Construction (Group I and 2)
GROUP I - General laborers, wiremen, handlers or setters, carpenter tender;
 track men; salamander tenders; landscape men; rod layers; welders (for alterations or entire projects); plumber laborers (conduct pipe, sewer work, drain tile and duct lines, digging and backfilling); power tool operators; pier hole diggers (over 10 ft.); jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; bush leaders on bulletiers; reinforcing steel handlers; air tamp operators; ditch line operators; swinging scaffold; geologie boggles (self-propelled); fork lift; bosmen; insulation men.
GROUP II - Vibrator operator; fork lift (bosmen); brick tender, plaster tender; storemans tender (includes all bod carriers classifications previously shown as mortar men and scaffolding).
GROUP III - Barco, Jackson or similar tamp operators; asphalt taster; power seen; mastic hot kettle men; sandblasting and gunnite men; wagon and chain drill operators; cutting torch or burner men.

LABORERS: Site Preparation (Zone 3)
GROUP I - Carpenter tenders; salamander tenders; loading tracks under blast boggles and conveyors; track men and all other general laborers; air tool operators; cement handler (bulk or sack); Chain and Miller Seeger boggles; camp men on earth fill; grade checkers on Cuts and Miller Seeger boggles; man; material batch toper; man; scale man; material mixer man (except on manholes); coffer dams, abutments and pier hole men working below ground; riprap pavers; rock, block or brick scaffolds over 10 ft. not self-supported from ground up; subman on concrete paving; vibrator men wire mesh extenders on concrete paving; all work in connection with water, sewer, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other type lining; power tool operators; all work in connection with hydraulic or General dredging operations; puddlers (paving only); crusher feeder; man handling concrete tiles on crescent material; man working with and handling easy material or materials (where special protection is required); toper of standing trees; barrier board men on pipe and ditch work; feeder man on wood pile driver; board and yellow oak vapors and cable lines on pier work; all laborers working on underground tunnels; white compressed air; rock used.
GROUP II - Sweater or screed men on asphalt; machinist; asphalt taster; laser beam man; barco tender; jacks or any other smaller hand work; driver; chain drillers; air track drills and all other smaller hand work; driver; cutting rock; man; lines and stringline men on concrete paving; crane, rollers and etc.; hot mastic setting men on applications; hand block operators; manhole bulletiers tenders and mortar men on brick or block manholes; sandblasting and gunnite; coarser; cobbling concrete; air tool operator; in tunnel; manhole builder; brick or block dynamite and powdermen; welder; hand pier layer or stick work.

CLASSIFICATION DEFINITIONS (Cont'd)

TRUCK DRIVERS - Building Construction (Zone 1)
GROUP I - Warehousemen and stock man.
GROUP II - Flat beds; pick-ups; dump trucks, under 10 yds.
GROUP III - Straddle trucks, wheel tractors (when used for towing), hydro lift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over);
GROUP IV - Dump trucks, 10 yds. and over; steel drivers; semi truck drivers
GROUP V - Distributor truck drivers and operators; oilers, greasers and mechanics' tenders
GROUP VI - Mechanics; transmits; tractor trailer
GROUP VII - Transit mix, 5 yds. and over
GROUP VIII - Transit mix, under 5 yds.

TRUCK DRIVERS - Site Preparation (Zone 2)
GROUP I - Mechanics and welders
GROUP II - A-frame, lowboy and boom truck driver
GROUP III - Material trucks, tandem; two teams; semi-trailers; winch trucks; fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers; tandem or semi-trailers; inslay wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speeders; euclids and other similar excavating equipment.
GROUP IV - One team station wagons; pickup trucks; material trucks, single axle; tank wagon drivers, single axle
GROUP V - Mechanics tender, oilers and greasers, field

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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SUPERSEDES DECISION

STATES: Missouri
 COUNTY: Franklin, Jefferson, Lincoln, St. Charles, Warren & City & County of St. Louis
 DECISION NO.: MO85-4032
 SUPERSEDES DECISION NO. MO84-4108 Dated December 21, 1984 In 49 FR 49820.
 DESCRIPTION OF WORK: Residential Projects, consisting of single family homes and apartments up to and including 4 stories

Basic Hourly Rate	Fringe Benefits	Basic Hourly Rate	Fringe Benefits
\$20.57	\$3.48	\$20.57	\$3.48
16.45	3.77	16.45	3.77
17.495	3.25	17.495	3.25
16.61	3.00	16.61	3.00
10.95	2.12	10.95	2.12
16.61	3.00	16.61	3.00
17.30	2.25+ 28%	17.30	2.25+ 28%
17.30	2.20+ 28%	17.30	2.20+ 28%
14.78	2.20+ 28%	14.78	2.20+ 28%
18.47	3.29+ 28%	18.47	3.29+ 28%
70.32	3.29+ 28%	70.32	3.29+ 28%
50.32		50.32	
17.20	7.15+ 13.2%	17.20	7.15+ 13.2%

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CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

- Group 1: Trucks or trailers of a water level capacity of 11.99 cu. yds. or less
- Group 2: Fork lift trucks single axle, job site ambulances & pick-up trucks and flat bed trucks
- Group 3: Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.9 cu. yds. including euclids, speedee and similar equipment of same capacity and compressors.
- Group 4: Trucks or trailers of a water level capacity of 22.0 cu. yds. and over including euclids, speedee and all floats, flat bed trailers, boom trucks, winch trucks, including small trailers, farm wagons, tilt top trailers, tool trailers, concrete pumps, concrete conveyors and gasoline tank trailers.

POWER EQUIPMENT OPERATORS:

- GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or crawler mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car or derrick boat; dragline; dredge; gradall; crawler or tire mounted; locomotive gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas electric or other powers); switch boat; & whirley.
- GROUP II - Air tugger w/air compressor; anchor placing barge asphalt spreader; atkey force feeder loader (self-propelled); back-filling machine; boat operator-suck boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixer-mobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumpcrete machine; concrete spreader; conveyor, large (not-self-propelled) hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic rough terrain, self-propelled; crane hydraulic-truck or crawler mounted-under 16 tons; drilling machines, self-powered used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jack hammers and baroc equipment); elevating grader; engine man, dredge; excavator or powerbeet machine; finishing machine, self-propelled oscillating screed; forklift/grader, road with power blade; highlift; hoist, concrete mobile, or similar equipment; hoist, stack; hydro-lammer; lad-a-vator; hoisting brick or concrete; loading machine (such as barter-greens); mixer-mobile, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix job site; plant, heating-job-site; plant mixing job site; plant, power generating-job site.

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Basic Monthly Rate	Range Benefits
PIPEFITTERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Cos.)	19.85 6.08
PIPEFITTERS & PLUMBERS (Lincoln County)	19.85 6.08
PLUMBERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Counties)	17.105 4.35 17.185 3.03
PLASTERERS	14.32 2.95 14.32 2.95 11.77 2.95 13.32 2.95
POWER EQUIPMENT OPERATORS:	
GROUP I	16.75 2.35 18.44 3.10+
GROUP II	21.11 3.42
GROUP III	20.55
GROUP IV	15.93 3.45 14.12 2.805
ROOFERS:	
Composition: Slate & Tile	15.17 80¢/hr. 55.00 Per wk. +b =
SHEET METAL WORKERS	14.00 15.37 15.47
SPRINKLER FITTERS	
TERRAZZO WORKERS	
TILE SETTERS	
TILE WORKER FINISHER	
TRUCK DRIVERS:	
GROUP 1	
GROUP 2	
GROUP 3	
GROUP 4	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.	
b - Paid vacation of 3 days for 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any one contract year; 5 days paid vacation for 1,000 hours of service in any one contract year. Also 7 paid holidays A thru G.	
FOOTNOTE: A-Christmas Day, B-New Year's Day, C-Independence Day, D-Memorial Day, E-Labor Day, F-Thanksgiving Day, G-Friday after Thanksgiving Day	

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SURFACES DECISIONS

COUNTY: BEAUFORT
DATE: DATE OF PUBLICATION
1979, in 4 p 886.
COMPREHENSIVE DECISION NUMBER S99-1016, dated February 2, 1979, in 4 p 886.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (Does not include single family homes and apartments up to and including four (4) stories
CITY: SOUTH CAROLINA
DECISION NUMBER: SCS-3050

Basic Hourly Rate	fringe Benefits	Basic Hourly Rate	fringe Benefits
\$ 9.42		WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.	
8.83			
9.26			
8.83			
12.95	3.29	Unlisted classifications needed for work not included within the scope of the classifications of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).	
9.06	3.29		
	+		
	+		
6.47		FOOTNOTE "a": Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day; Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more service, and 5% for those employees with 5 months to 5 years of service.	
11.75			
4.94			
5.48			
7.50			
9.40			
9.33			
7.00			
9.32			
8.18			
8.96			
9.00			
BRICK & BLOCK MASONS			
CARPENTERS			
CEMENT MASONS/FINISHERS			
ELECTRICIANS			
ELEVATOR CONSTRUCTORS:			
MECHANICS			
HELPERS			
PROGATIONARY HELPERS			
IRONWORKERS			
LADERS - UNSKILLED			
MASON TENDERS			
PAINTERS - BRUSH & ROLLER			
PIPEFITTERS			
PLUMBERS			
POWER EQUIPMENT OPERATORS:			
BACKHOE			
CRANE			
FOOTERS			
SHEET METAL WORKERS			
TILE SETTERS			

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FR Doc. 85-21176 Filed 9-5-85; 8:45 am]
BILLING CODE 4510-27-C

COMPASSIONATE RECTITUDE

STATE: SOUTH CAROLINA
COUNTIES: Aiken, Anderson, Barnwell, Charleston, Dorchester, Florence, Greenwood, Lincoln, Lexington, Pickens, Richland, Spartanburg, York.

DECISION NUMBER: SC95-3948
SUPERSEDES DECISION NUMBER SC92-1050, dated September 24, 1991, in 47 FR 42556.

DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (Does not include tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation bridges involving marine construction; and other construction; and major bridges).

Basic Inventory Benefits	Project Inventory Benefits

	Basic Hourly Rate	Fringe Benefits
HIGHWAY CONSTRUCTION:		
ASPHALT LAY DOWN MAN	5.40	
ASPHALT PAKER	4.84	
CARPENTER	6.56	
CARPENTER HELPER	5.30	
CONCRETE FINISHER	6.45	
CONCRETE FINISHER HELPER	4.98	
FLAGGER	4.43	
FORM SETTER (ROAD)	5.97	
GRADE CHECKER	4.64	
IRONWORKER - REINFORCING	7.96	
IRONWORKER - STRUCTURAL	9.40	
LABORER	4.43	
LUTEMAN	4.87	
MASON	7.27	
MECHANIC	6.52	
MECHANIC HELPER	4.61	
OILER	4.85	
PAINTER - BRIDGE	8.47	
PIPE LAYER	5.01	
POST DRIVER	6.93	
POWER TOOL OPERATOR	5.44	
WELDER	6.24	
POWER EQUIPMENT OPERATORS:		
ASPHALT DISTRIBUTOR	4.50	
ASPHALT PAPER	5.38	
ASPHALT PLANT	5.29	
BULLDOZER	5.41	
SULLOZIER	5.01	
UTILITY	5.01	
CONCRETE SAW	4.95	
CRANE, BACKHOE, DRAG-LINE, SHOVEL (ONE YARD AND UNDER)	6.05	
CRANE, BACKHOE, DRAG-LINE, SHOVEL (OVER ONE YARD)	7.69	
POWER EQUIPMENT OPERATORS:		
GRASSMAN	4.82	
RIDGESSEDER	5.00	
LOADER	5.50	
MOTOR GRADER (FINE GRADE)	7.40	
MOTOR GRADER (ROUGH GRADE)	5.85	
PAVEMENT MILLING MACHINE	8.04	
ROLLER (FINISH)	4.62	
SCRAPE	5.40	
SCREEN ASPHALT	5.61	
SWEEPER	5.33	
STRIPPING MACHINE	4.67	
TRACTOR (UTILITY)	5.93	
TRACTORS - SINGLE-REAR AXLE	4.51	
TRACTORS - MULTI-REAR AXLE	4.63	
TRACTORS - HEAVY DUTY	6.17	
POWER EQUIPMENT OPERATORS:		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract classes (29 CFR Part 5, 5.5 (a) (1) (iii)).		

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Register Federal

Friday
September 6, 1985

Part III

Environmental Protection Agency

40 CFR Part 466

Porcelain Enameling Point Source
Category Effluent Limitations Guidelines,
Pretreatment Standards, and New Source
Performance Standards; Final Regulations

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 466****[FRL 2853-3]****Porcelain Enameling Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct porcelain enameling operations. EPA agreed to propose and take final action on these amendments in a settlement agreement which resolved the various lawsuits challenging the final porcelain enameling regulation promulgated by EPA on November 24, 1982, 47 FR 53172.

The amendments include: (1) Certain modifications of the effluent limitations for "best practicable control technology currently available" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct discharges; and (2) certain modifications to the pretreatment standards for new and existing indirect discharges (PSNS and PSES).

EPA is also amending two tables which were incorrectly printed in the final regulation that was published November 24, 1982.

DATES: This regulation shall become effective on October 21, 1985. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is November 25, 1985.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. In accordance with 40 CFR Part 23 (50 FR 7268), this regulation shall be considered

issued for purposes of judicial review at 1:00 p.m. eastern time on September 20, 1985.

ADDRESS: Mr. Ernst P. Hall, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, S.W., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: Organization of this notice:

- I. Legal Authority
- II. Background
 - A. Prior Regulation
 - B. Challenges to Prior Regulation
 - C. Settlement Agreement
- III. Response to Public Comments
- IV. Amendments to the Regulation
- V. Corrections to the Regulation
- VI. Environmental Impact of the Modification to the Regulation
- VII. Economic Impact of the Regulation
- VIII. Executive Order 12291
- IX. Regulatory Flexibility Analysis
- X. OMB Review
- XI. List of Subjects in 40 CFR Part 466

I. Legal Authority

The regulation described in this notice is promulgated under the authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-217).

II. Background**A. Prior Regulation**

On January 27, 1981, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Source (PSES), and Pretreatment Standards for New Sources (PSNS) for the porcelain enameling point source category (46 FR 8860). EPA published the final porcelain enameling regulation in November 24, 1982, (47 FR 53172).

B. Challenges to the Prior Regulation

After publication of the porcelain enameling regulation, certain members of the porcelain enamel industry and the Porcelain Enamel Institute, the Gas Appliance Manufacturers Association, and the Association of Home Appliance Manufacturers filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit. (*Porcelain Enamel Institute v. EPA*, 4th Cir. No. 82-2124 and Consolidated Cases.)

C. Settlement Agreement

On August 19, 1983, the parties in the consolidated lawsuits entered into a settlement agreement which resolved all issues related to the porcelain enameling regulation raised by the petitioners. On September 28, the United States Court of Appeals for the Fourth Circuit entered an order staying briefing in the lawsuits. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain amendments to the final porcelain enameling regulation. If, after EPA has taken final action under the Settlement Agreement, each individual provision of the final porcelain enameling regulation is consistent with the Settlement Agreement, the petitioners agreed to dismiss their various lawsuits challenging the final porcelain enameling regulation and not to challenge the new amendments. A copy of the Settlement Agreement was sent to EPA Regional Offices and State NPDES permit-issuing authorities and was included in the record of this rulemaking.

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of certain sections of 40 CFR Part 466 pending final action by EPA on each respective modification. On December 23, 1983, the Court entered an order staying those sections of the regulation promulgated on November 24, 1982 which EPA is amending in the regulation appended to this notice. All limitations and standards contained in the final porcelain enameling regulation published on November 24, 1982 which are not specifically listed in this amendment were not stayed by the order entered by the court, and EPA is not deleting or amending any of the limitations and standards that were not addressed in this amendment.

III. Response to Public Comments

The Agency received 15 letters containing comments on the proposed regulation published April 27, 1984. All of the comments were supportive of the proposed amendments to the porcelain enameling regulation originally published on November 24, 1982. All of the commenters stated that the proposed amendment to the porcelain regulation were consistent with the Settlement Agreement with the exception of the values for nickel for the steel subcategory under § 466.13 (New Source Performance Standards) and § 466.15 (Pretreatment Standards for New Sources). The Agency intended to calculate these nickel values based on a daily maximum concentration of 1.2 mg/l. The wrong concentration was used inadvertently in the proposed amendment. These values for nickel are corrected in the final regulation. Except for the nickel value discussed above, none of the commenters made any adverse comment on any part of this amendment. Commenters agreed the regulation is technologically and economically feasible if the amendments are made and nickel values are corrected.

IV. Amendments to the Regulation

Below are descriptions of the amendments to the porcelain enameling regulation EPA is promulgating. The amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on November 24, 1982. See the preamble to the regulation, at 47 FR 53172, for the Agency's findings with respect to these technologies.

A. Section 466.01 Applicability

The promulgated rule contains BPT limitations for the coating operations for the Cast Iron Subcategory which apply to all cast iron wet process coating operations. Hence, under the final regulation wastewaters from coating cast iron, which are co-treated with wastewater from coating steel, are subject to the limitations for cast iron coating operations. These limitations are lower than the limitations for coating steel due to the lower average production-related water flow for the Cast Iron Subcategory. EPA is amending the applicability section of the regulation for the porcelain enameling point source category, § 466.01, to allow plants applying wet process coating to cast iron in conjunction with, and as a secondary function to, applying coatings to steel to adhere to coating limitations

equivalent to those set forth in § 466.11 of the regulation.

B. Subpart A—Steel Basis Material Subcategory—Iron Limitations and Standards

EPA is promulgating amendments to the BPT and BAT limitations and NSPS standards for iron in §§ 466.11, 466.12 and 466.13 of the porcelain enameling regulation. The limitations in the November 24, 1982 final regulation are based upon concentrations of 1.23 mg/l (one day maximum) and 0.63 mg/l (monthly average). The iron limitations promulgated today are based upon data obtained from two porcelain enameling plants in the steel basis subcategory (ID 33097 and ID 40063) which use the recommended technology (hydroxide precipitation and sedimentation, or "lime and settle"). These data were judged to be more typical of the steel subcategory than the data used as the basis for the November 24, 1982 regulation (long-term mean is 1.34 mg/l and 0.67 mg/l for the new data from the two plants and 0.41 mg/l for the data used as the basis for the November 24, 1982 regulation). The iron limitations and standards are based upon concentrations of 2.8 mg/l (daily maximum) and 1.4 mg/l (monthly average).

C. Limitations and Standards for Coating Operations in all Subcategories

EPA is promulgating amendments to all the limitations and standards for BAT, NSPS, and PSNS for coating operations in all subcategories. The limitations and standards, which were promulgated November 24, 1982, were based upon an allowable flow of 0.638 l/m². This flow was the average of two values (0.0107 l/m² and 1.2603 l/m²) which were the measured flows for ball mill washout at two plants. The amended limitations and standards are based upon an allowable flow of 1.2603 l/m², the higher of the two values discussed above.

D. Subpart A—Nickel Standards for NSPS and PSNS for the Steel Subcategory

EPA is promulgating amendments to the NSPS and PSNS standards for nickel in the steel subcategory. The standards in the November 24, 1982 final regulation were based on concentrations of 0.55 mg/l (one day maximum) and 0.37 mg/l (monthly average). Owing to the substantial effect of flow reduction, the Agency has decided to use a different data base for calculating nickel standards for NSPS and PSNS in the steel subcategory. The amended standards for new sources in the steel

subcategory are based on concentrations of 1.2 mg/l (daily maximum) and 0.63 mg/l (monthly average).

E. New Source Performance Standards; Pretreatment Standards for New Sources; Metal Preparation Operation

EPA is promulgating amendments to §§ 466.13, 466.33 and 466.43 of the Porcelain Enameling Regulation which contain new source performance standards applicable to new direct dischargers and to §§ 466.15, 466.35 and 466.45 which contain pretreatment standards applicable to new indirect dischargers. Each of the mass-based standards for the metal preparation operation in each of these sections was based upon flow reduction of approximately 91 percent from production—normalized flow used to calculate best practicable technology limitations. The amended standards for the metal preparation operation for new sources are based upon reduction of allowable flow by 75 percent from the flow used to calculate best practicable technology limitations.

V. Corrections to the Regulation

EPA is amending § 466.11 and § 466.14 to correct the tables which were inadvertently misprinted in the original regulation published on November 24, 1982. The table in § 466.11 of the November 24, 1982 regulation is incorrect where metric units are printed in the English units table. This amendment corrects the table by deleting "metric units—mg/m² of area processed or coated". The misprinted table in § 466.14(a) of the November 24, 1982 regulation is incorrect where two columns, entitled Metal preparation and Coating operation, are printed to show the concentration based pretreatment standards for existing sources. This amendment corrects the table by deleting these two columns and showing only one column entitled Maximum for any 1 day and one column entitled Maximum for monthly average. The corrected tables in the amended regulation revise the format for the tables but do not in any way alter the requirements of the regulation.

VI. Environmental Impact of the Amendments to the Porcelain Enameling Regulation

The amendments promulgated today will allow 28 existing direct dischargers and new direct and indirect dischargers to discharge a greater amount of pollutants than was allowed by the November 24, 1982 regulation. The increase in the mass of pollutants

allowed to be discharged is not expected to be substantial, however.

The increased quantity of iron that will be discharged at BPT due to the higher iron concentration under the amended regulation averages only 0.4 pound per plant per day.

The doubling of flow for coating operations at BAT will not have a substantial impact because coating flow represents a small portion of the total wastewater flow from all direct dischargers. There will be an increase of less than 1.5 percent in the quantity of toxic pollutants discharged at BAT due to the increase in wastewater flow for the coating operations in the proposed amended regulation.

The increase in the quantity of toxic pollutants that may be discharged by new sources under the amended regulation is nationally insignificant. Under the regulation that was promulgated November 24, 1982, it is estimated that model new sources would remove 98.4 percent of the toxic pollutants present in the raw wastewater. It is estimated that 97.9 percent of the toxic pollutant in raw wastewater will be removed by model new sources under the amended regulation. The Agency expects the number of porcelain enameling plants to remain stable through 1987 and therefore few new sources are expected to be built.

VII. Economic Impact of the Regulation

The model technologies for the amended regulation for the porcelain enameling category are the same as those upon which the original regulation was based. Accordingly, that portion of the compliance costs associated with the amended regulation are identical to those of the original regulation. The preamble to the original regulation and the supporting Economic Impact Analysis explain the data, methodology, and conclusions with respect to costs and economic impacts. For the most part, those data and conclusions also support this amendment.

Subsequent to the promulgation of the original porcelain enameling regulation and to the proposal of these amendments, the Agency became aware that its estimates of the cost of compliance with this regulation may have understated the cost of disposal of solid waste. In particular, the Agency's original estimates of solid waste disposal costs were based upon the premise that the waste would not be considered hazardous under the Resource Conservation and Recovery Act of 1980 (RCRA). However, sludge generated in the steel subcategory from the treatment of spent pickle liquor is

currently included under Hazardous Waste No. K062 (40 CFR 261.32). A petition for rulemaking has been filed with the Agency questioning the Agency's interpretation, and EPA is planning to initiate rulemaking proceedings in response to the petition. Nonetheless, the Agency has revised its estimates of the costs for disposal of these wastes and has reviewed the economic achievability of the regulation in light of these revised estimates.

The cost estimates are for on-site separate lime and settle treatment of the pickle liquor with sludge disposal off-site as a hazardous waste. This requires minimal investment and annual costs. For a normal plant the added investment cost would be \$3,000 and the total annual cost would be \$1,600.

In making the revised estimates, the Agency has omitted costs for several porcelain enameling facilities in the steel subcategory that have petitioned the Agency for—and received—de-listing of their particular wastes. Other plants also may be able to obtain site-specific de-listings and therefore avoid the additional hazardous waste disposal costs. In addition, the industry may be able to submit data that might justify industry-wide de-listing.

In order to determine if the additional hazardous waste disposal costs would affect the economic achievability of the porcelain enameling regulation, the Agency performed a cost sensitivity analysis, where the revised compliance costs are increased on a percentage basis and the resulting changes to the economic impacts are projected. This analysis is included in the record.

For almost all of the plants analyzed, the additional cost is less than 5 percent of the original compliance cost. For many of the plants (53 percent), the additional cost is only a 1 percent increase in compliance costs. For existing sources, therefore, the additional costs do not alter the Agency's determination of economic achievability. For new sources, this magnitude of increased compliance cost does not alter the Agency's opinion that NSPS and PSNA will not represent a barrier to entry.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of \$100 million or more, or meet other economic criteria. Today's regulations, like the regulation promulgated on November 24, 1982, is not major because it does not fall within

the criteria for major regulations established in Executive Order 12291.

IX. Regulatory Flexibility Analysis

Pub. L. 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the November 24, 1982 final porcelain enameling regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (47 FR 53179). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to this regulation, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

X. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. OMB made no comments.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2040-0033.

XI. List of Subjects in 40 CFR Part 466

Porcelain enameling industry, Waste treatment and disposal, Water pollution control.

Dated: August 27, 1985.

Lee M. Thomas,
Administrator.

For the reasons stated above, EPA is amending 40 CFR Part 466 as follows:

PART 466—PORCELAIN ENAMELING POINT SOURCE CATEGORY

1. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e) and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. 40 CFR § 466.01 is amended by adding a new paragraph (d) to read as follows:

§ 466.01 Applicability.

* * * * *

(d) When wastewaters from coating cast iron are coterminated with wastewaters from coating steel, the limitations for coating steel contained in § 466.11 may be applied to the entire wastestream.

3. 40 CFR Part § 466.11 is amended by revising both entries for the pollutant iron in all 4 columns of the table to read as follows:

§ 466.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

SUBPART A.—BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ² of area processed or coated				
Iron	112.12	22.69	56.06	11.34
English units—lbs/1 million ft ² of area processed or coated				
Iron	22.96	4.65	11.48	2.32

4. 40 CFR Part 466.12 is amended by revising both entries for the pollutant iron in all four columns and both coating operation columns for the pollutants chromium, lead, nickel, zinc and aluminum to read as follows:

§ 466.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically.

SUBPART A.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ² of area processed or coated				
Chromium	...	0.53	...	0.22
Lead	...	0.19	...	0.16
Nickel	...	1.78	...	1.26
Zinc	...	1.68	...	0.71
Aluminum	...	5.74	...	2.35
Iron	112.12	22.69	56.06	11.34
English units—lbs/1 million ft ² of area processed or coated				
Chromium	...	0.11	...	0.05
Lead	...	0.04	...	0.03
Nickel	...	0.37	...	0.26
Zinc	...	0.35	...	0.15
Aluminum	...	1.18	...	0.48

SUBPART A.—BAT EFFLUENT LIMITATIONS—Continued

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Iron	22.96	0.72	11.48	0.36

5. 40 CFR 466.13 is amended by revising the table to read as follows:

§ 466.13 New source performance standards.

SUBPART A.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ² of area processed or coated				
Chromium	3.7	0.47	1.5	0.19
Lead	1.0	0.13	0.9	0.11
Nickel	12.0	1.51	6.3	0.79
Zinc	10.2	1.29	4.2	0.53
Aluminum	30.3	3.82	12.4	1.56
Iron	28.0	3.53	14.0	1.77
Oil and grease	100.0	12.60	100.0	12.60
TSS	150.0	18.91	120.0	15.12
pH	(1)	(1)	(1)	(1)
English units—lbs/1 million ft ² of area processed or coated				
Chromium	0.78	0.10	0.31	0.04
Lead	0.21	0.03	0.19	0.03
Nickel	2.46	0.31	1.29	0.16
Zinc	2.09	0.27	0.86	0.11
Aluminum	6.21	0.78	2.54	0.32
Iron	5.74	0.72	2.87	0.36
Oil and grease	20.48	2.58	20.48	2.58
TSS	30.72	3.87	24.58	3.10
pH	(1)	(1)	(1)	(1)

(1) Within the range 7.5 to 10.0 at all times.

6. Section 466.14, is amended by revising paragraphs (a) and (b) to read as follows:

§ 466.14 Pretreatment standards for existing sources.

(a) Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	...	...
Milligrams per liter (mg/l)		
Chromium	0.42	0.17
Lead	0.15	0.13
Nickel	1.41	1.00

SUBPART A.—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	...	...
Zinc	1.33	0.56

(b) In cases where POTW find it necessary to impose mass effluent pretreatment standards the following equivalent mass standards are provided:

SUBPART A.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ² of area processed or coated				
Chromium	...	0.53	...	0.22
Lead	...	0.19	...	0.16
Nickel	...	1.78	...	1.26
Zinc	...	1.68	...	0.71
English units—lbs/1 million ft ² of area processed or coated				
Chromium	...	0.11	...	0.05
Lead	...	0.04	...	0.03
Nickel	...	0.37	...	0.26
Zinc	...	0.35	...	0.15

7. 40 CFR 466.15 is amended by revising the table to read as follows:

§ 466.15 Pretreatment standards for new sources.

SUBPART A.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ² of area processed or coated				
Chromium	3.7	0.47	1.5	0.19
Lead	1.0	0.13	0.9	0.11
Nickel	12.0	1.51	6.3	0.79
Zinc	10.2	1.29	4.2	0.53
English units—lbs/1 million ft ² of area processed or coated				
Chromium	0.78	0.10	0.31	0.04
Lead	0.2	0.03	0.19	0.02
Nickel	2.46	0.31	1.29	0.16
Zinc	2.09	0.27	0.86	0.11

8. 40 CFR 466.22 is amended by revising paragraph (b) to read as follows:

§ 466.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(b) The discharge of process wastewater pollutants from all porcelain

enameling coating operations shall not exceed the values set forth below:

SUBPART B.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	***	***	***	***
mg/m ³ (lbs/1 million ft ³) of area coated				
Chromium.....	0.53	(0.11)	0.22	(0.05)
Lead.....	0.19	(0.04)	0.16	(0.03)
Nickel.....	1.78	(0.37)	1.26	(0.26)
Zinc.....	1.68	(0.35)	0.71	(0.15)
Aluminum.....	5.74	(1.18)	2.35	(0.48)
Iron.....	1.55	(0.32)	0.79	(0.16)

9. Section 466.23 is amended by revising paragraph (b) to read as follows:

§ 466.23 New source performance standards.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	***	***	***	***
mg/m ³ (lb/1 million ft ³) of area coated				
Chromium.....	0.47	(0.10)	0.19	(0.04)
Lead.....	0.13	(0.03)	0.11	(0.02)
Nickel.....	0.69	(0.14)	0.47	(0.10)
Zinc.....	1.29	(0.27)	0.53	(0.11)
Aluminum.....	3.82	(0.78)	1.56	(0.32)
Iron.....	1.55	(0.32)	0.79	(0.16)
Oil and grease.....	12.60	(2.58)	12.60	(2.58)
TSS.....	18.91	(3.87)	15.12	(3.10)
pH.....	(1)	(1)	(1)	(1)

¹ Within the range 7.5 to 10.0 at all times.

10. Section 466.24 is amended by revising paragraph (b)(2) to read as follows:

§ 466.24 Pretreatment standards for existing sources.

(b) * * *

(2) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	***	***	***	***
mg/m ³ (lb/1 million ft ³) of area coated				
Chromium.....	0.53	(0.11)	0.22	(0.05)
Lead.....	0.19	(0.04)	0.16	(0.03)
Nickel.....	1.78	(0.37)	1.26	(0.26)
Zinc.....	1.68	(0.35)	0.71	(0.15)

11. Section 466.25, is amended by revising paragraph (6) to read as follows:

§ 466.25 Pretreatment standards for new sources.

(b) The discharge of process wastewater pollutants from all porcelain enameling coating operations shall not exceed the values set forth below:

SUBPART B.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	***	***	***	***
mg/m ³ (lb/1 million ft ³) of area coated				
Chromium.....	0.47	(0.10)	0.19	(0.04)
Lead.....	0.13	(0.03)	0.11	(0.02)
Nickel.....	0.69	(0.14)	0.47	(0.10)
Zinc.....	1.29	(0.27)	0.53	(0.11)

12. Section 466.32 is amended by revising both entries for all pollutants in the columns of the table entitled coating operation to read as follows:

§ 466.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

SUBPART C.—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ³ or area processed or coated				
Chromium.....	***	0.53	***	0.22
Lead.....	***	0.19	***	0.16
Nickel.....	***	1.78	***	1.26
Zinc.....	***	1.68	***	1.71
Aluminum.....	***	5.74	***	2.35
Iron.....	***	1.55	***	0.80
English units—lbs/1 million ft ³ of area processed or coated				
Chromium.....	***	0.11	***	0.05
Lead.....	***	0.04	***	0.03
Nickel.....	***	0.37	***	0.26
Zinc.....	***	0.35	***	0.35
Aluminum.....	***	1.18	***	0.48
Iron.....	***	0.32	***	0.16

13. 40 CFR 466.33 is amended by revising the table to read as follows:

§ 466.33 New source performance standards.

* * * * *

SUBPART C.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ³ of area processed or coated				
Chromium.....	3.60	0.47	1.46	0.19
Lead.....	0.97	0.13	0.88	0.11
Nickel.....	5.35	0.69	3.60	0.47
Zinc.....	9.92	1.29	4.09	0.53
Aluminum.....	29.46	3.82	12.06	1.56
Iron.....	11.96	1.55	6.13	0.79
Oil and grease.....	97.24	12.60	97.24	12.60
TSS.....	145.86	18.91	116.69	15.12
pH.....	(1)	(1)	(1)	(1)
English units—lbs/1 million ft ³ of area processed or coated				
Chromium.....	0.74	0.10	0.30	0.04
Lead.....	0.20	0.03	0.16	0.02
Nickel.....	1.10	0.14	0.74	0.10
Zinc.....	2.03	0.27	0.84	0.11
Aluminum.....	6.03	0.78	2.47	0.32
Iron.....	2.45	0.32	1.26	0.16
Oil and grease.....	19.92	2.58	19.92	2.58
TSS.....	29.88	3.87	23.90	3.10
pH.....	(1)	(1)	(1)	(1)

¹ Within the range 7.5 to 10.0 at all times.

14. Section 466.34, is amended by revising paragraph (b) to read as follows:

§ 466.34 Pretreatment standards for existing sources.

(b) In cases where POTW find it necessary to impose mass pretreatment standards the following equivalent mass standards are provided:

SUBPART C.—PSES

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation
Metric units—mg/m ³ of area processed or coated				
Chromium.....	***	0.53	***	0.22
Lead.....	***	0.19	***	0.16
Nickel.....	***	1.78	***	1.26
Zinc.....	***	1.68	***	1.71
English units—lbs/1 million ft ³ of area processed or coated				
Chromium.....	***	0.11	***	0.05
Lead.....	***	0.04	***	0.03
Nickel.....	***	0.37	***	0.25
Zinc.....	***	0.35	***	0.35

15. 40 CFR 466.35 is amended by revising the table to read as follows:

§ 466.35 Pretreatment standards for new sources.

* * * * *

SUBPART C.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation

Metric units—mg/m² of area processed or coated

Chromium.....	3.60	0.47	1.46	0.19
Lead.....	0.97	0.13	0.86	0.11
Nickel.....	5.35	0.69	3.60	0.47
Zinc.....	9.92	1.29	4.09	0.53

English units—lbs/1 million ft² of area processed or coated

Chromium.....	0.74	0.10	0.30	0.04
Lead.....	0.20	0.03	0.18	0.02
Nickel.....	1.10	0.14	0.74	0.10
Zinc.....	2.03	0.27	0.84	0.11

16. 40 466.43 is amended by revising the table to read as follows:

§ 466.43 New source performance standards.

SUBPART D.—NSPS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation

Metric units—mg/m² of area processed or coated

Chromium.....	6.23	0.46	2.52	0.19
Lead.....	1.69	0.13	1.52	0.11
Nickel.....	9.25	0.69	6.23	0.47
Zinc.....	17.16	1.29	7.07	0.53
Aluminum.....	50.97	3.82	20.86	1.56
Iron.....	20.69	1.55	10.60	0.79
Oil and grease.....	168.23	12.60	168.23	12.60
TSS.....	252.35	18.91	201.88	15.12
pH.....	(¹)	(¹)	(¹)	(¹)

English units—lbs/1 million ft² of area processed or coated

Chromium.....	1.28	0.10	0.52	0.04
Lead.....	0.35	0.03	0.31	0.03
Nickel.....	1.90	0.14	1.28	0.10
Zinc.....	3.52	0.27	1.45	0.11
Aluminum.....	10.44	0.78	4.27	0.32
Iron.....	4.24	0.32	2.17	0.16
Oil and grease.....	34.46	2.58	34.46	2.58
TSS.....	51.69	3.87	41.35	3.10
pH.....	(¹)	(¹)	(¹)	(¹)

¹ Within the range 7.5 to 10.0 at all times.

17. 40 CFR 466.45 is amended by revising the table to read as follows:

§ 466.45 Pretreatment standards for new sources.

SUBPART D.—PSNS

Pollutant or pollutant property	Maximum for any 1 day		Maximum for monthly average	
	Metal preparation	Coating operation	Metal preparation	Coating operation

Metric units—mg/m² of area processed or coated

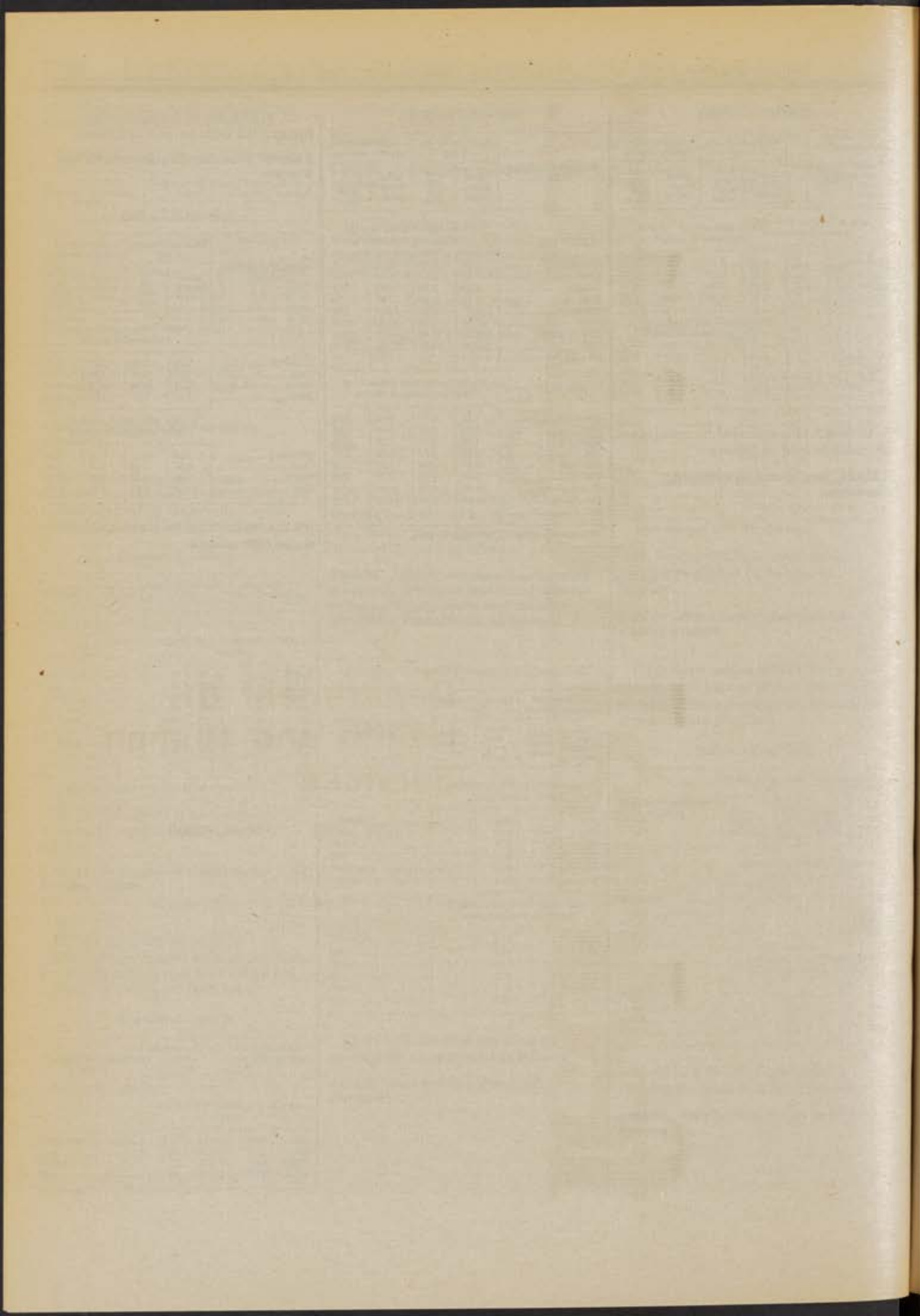
Chromium.....	6.23	0.46	2.52	0.19
Lead.....	1.69	0.13	1.52	0.11
Nickel.....	9.25	0.69	6.23	0.47
Zinc.....	17.16	1.29	7.07	0.53

English units—lbs/1 million ft² of area processed or coated

Chromium.....	1.28	0.10	0.52	0.04
Lead.....	0.35	0.03	0.31	0.02
Nickel.....	1.90	0.14	1.28	0.10
Zinc.....	3.52	0.27	1.45	0.11

[FR Doc. 85-21175 Filed 9-5-85; 8:45 am]

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Federal Register

Friday
September 6, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1040

Sunlamp Products; Performance
Standard; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1040

[Docket No. 82N-0188]

Sunlamp Products; Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the performance standard for sunlamp products and ultraviolet (UV) lamps intended for use in these products to accommodate new products employing design concepts significantly different from those for which the current standard was developed. Also, FDA's experience in applying the current standard, which went into effect on May 7, 1980, indicates that some requirements are either inappropriate for or inapplicable to some products. The amendments are intended to establish a standard that is appropriate for the present technology of tanning and new sunlamp product designs.

DATES: Effective September 8, 1986, for sunlamp products and ultraviolet lamps that are manufactured on or after this date. For additional information concerning the applicability of this amended performance standard, see the "EFFECTIVE DATE" paragraph in the preamble of this document. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 1040.20 effective September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 20, 1983 (48 FR 22886) (corrected October 21, 1983; 48 FR 48837), FDA issued a proposed rule to amend the performance standard for sunlamp products and ultraviolet lamps intended for use in sunlamp products (21 CFR 1040.20). In the preamble to the May 20, 1983 proposal, FDA discussed the history of § 1040.20 and the issues that led to the agency's decision to propose to revise the standard. The preamble also described the changes in the standard that FDA proposed to make based on the agency's experience in administering the standard. Interested persons were given until July 19, 1983, to provide written data, views, or

comments concerning the amendments and any associated information on their potential environmental or economic impact.

Comments

Comments were received from an interested member of the public, a medical academy, two manufacturers, an individual who described himself as an association representing tanning professionals, and a Canadian government agency. A summary of the comments and FDA's responses to them follows:

1. One comment agreed with the proposed amendments as they would apply to the use of sunlamp products for skin-tanning purposes but questioned whether the regulations also were intended to apply to sunlamp products used for medical purposes. The comment stated that most of the safety provisions of the proposed rule should be adhered to regardless of the purpose of the sunlamp use. The comment suggested, however, that the warning statement in § 1040.20(d)(1)(i) not be required to be included on medical therapy units because the statement would establish a negative environment for the treatment regimen and would be counterproductive. In addition, the warning statement could cause patients to resist the use of an effective form of therapy for diseases such as psoriasis.

Section 1040.20 applies only to sunlamp products as defined in § 1040.20(b)(9): "Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation with wavelengths between 200 and 400 nanometers, to induce skin tanning" (emphasis added). Accordingly, the warning statement of § 1040.20(d)(1)(i) applies only to sunlamp products intended for skin tanning.

2. One comment suggested that the proposed amendments should be modeled after the draft German Industrial Standard DIN 50-50, "Non-Therapeutic UV Irradiation Apparatus for the Human Body." In this standard, a sunburn effect is defined by the erythema-threshold time and by the tanning effect (pigmentation-threshold time). Each manufacturer is required to declare on its sunlamp product label the erythema and pigmentation threshold times for the product. In addition, the product is required to be classified and labeled according to the magnitude of the erythema-threshold time.

FDA believes that the current standard, which requires manufacturers to provide adequate directions for use,

including recommended exposure schedules and exposure positions, achieves the same goals that the German standard achieves. FDA's evaluation indicates that little safety advantage is to be gained by rating sunlamp products according to an estimated erythema potential. To establish a system of erythema potential ratings that would be appropriate under all use conditions and for all product designs or configurations would be burdensome and excessively complicated. A sunlamp product may have almost any spectral distribution and irradiance depending upon varying factors; for example, product design, lamp design, and lamp age. Also, human skin varies greatly from individual to individual in sensitivity to burning induced by sunlamp products. For all these reasons, FDA declines to adopt the suggestion.

3. One comment on § 1040.20(c)(2)(ii) objected to FDA's proposal to remove the current 10-minute limit on a sunlamp product timer. The comment also objected to the proposal to revise § 1040.20(c)(4) to proscribe only automatic resumption of emission from a product. The comment argued that such changes inappropriately allow the manufacturer, seller, or user of the product to decide what conditions of sunlamp use are safe.

FDA believes that irradiation of the skin with ultraviolet radiation to induce skin tanning is hazardous. The performance standard for sunlamp products was established to protect the consumer from acute burns (as evidenced by erythema) and from exposure to hazardous radiation that is unnecessary for skin tanning (in this case, UV radiation of wavelengths in air of less than 260 nanometers (nm)) and to warn the consumer of the known adverse effects to the body after exposure to ultraviolet radiation. FDA believes that the user of a sunlamp product can take appropriate action when informed of the possible adverse effects to the body from exposure to ultraviolet radiation, if the product is equipped with necessary safety performance features.

The current 10-minute maximum timer interval and the requirement concerning resumption of radiation emission, however, are inappropriate for newer sunlamp products now on the market. The agency's position on these two requirements remains as expressed in the discussion in the preamble to the proposed rule (48 FR 22888).

FDA notes that the timer is defined in § 1040.20(b)(10) as any device incorporated into a sunlamp product

that terminates radiation emission after a preset time interval. A sunlamp product may, however, be designed to use more than one source of ultraviolet radiation with differing spectral distributions. Such a product may need to incorporate more than one timer and more than one maximum exposure time to minimize potential injury to the user. The manufacturer is required to provide a recommended exposure schedule that would not result in acute injuries when followed and to provide the means to enable the user to follow these instructions regardless of the complexity of the spectral distribution of the radiation. The standard is modified in the final rule to make this requirement clear.

4. A comment stated that the language of § 1040.20(c)(2)(iv) of the proposed amendments may be misleading because the proposed language may be interpreted to exclude timers that will automatically resume radiation at the point when power is interrupted. Because the intent of the amendment has been perceived to allow this usage, the comment suggested that this requirement be revised to state, "The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the sunlamp product has been terminated."

The agency accepts the suggested change.

5. A comment suggested that the warning statement required by § 1040.20(d)(1)(i) should utilize the signal word "CAUTION" rather than "DANGER." The comment contended that the word "DANGER" implies an immediate and serious threat to life, a hazard not associated with UVA sunlamp products, i.e., sunlamp products that operate in the wavelength region of 320 to 400 nm. The comment stated that there is a need for an appropriate warning label cautioning the user that certain safeguards need to be observed to avoid injury and that prolonged use has long-term risk.

The agency believes that the word "DANGER" as used on the warning statement is appropriate. Exposure to ultraviolet radiation can be an immediate threat to life for people using photosensitizing medications or cosmetics and for people with a medical condition that causes them to be sensitive to ultraviolet radiation, for example, photoallergies.

6. One comment urged that UVA lamps should be exempt from the provisions of § 1040.20(d) that require the warning: "As with natural sunlight, overexposure can cause eye and skin

injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer." The comment argued that radiation at wavelengths in air longer than 320 nm cannot induce skin cancer and that only radiation at wavelengths in air shorter than 320 nm is responsible for premature skin aging. The comment argued further that UVA radiation that does not contain measurable UVB radiation (280 to 320 nm) has positive effects, for example, a UVA tan can protect a person against the harmful UVB radiation of the sun (photoprotection), and UVA radiation that does not contain UVB radiation can monomerize pyrimidine dimers in the deoxyribonucleic acid (DNA).

FDA disagrees that it has been proven that UVA does not cause skin cancer or premature skin aging, or that UVA radiation can protect humans against UVB radiation. Relatively few studies have been carried out on the long-term biological effects of UVA radiation in humans or in animals. Further studies are needed to establish clearly the long-term biological effects of UVA radiation. There are, however, reports that, under long-term continuous exposure, UVA radiation can induce skin cancer in test animals (Refs. 1 and 2). Also, there is evidence that the incidence of skin tumors induced in animals by irradiation with a combination of UVB and UVA radiation can be increased by subsequent irradiation with UVA alone (Ref. 3).

There is evidence (Ref. 4) that UVA radiation can enhance the photoreactivation of pyrimidine dimers in the DNA of human leukocytes. However, this effect has not been shown to provide humans protection against UVB radiation (Ref. 5). The Task Force on Photobiology of the American Academy of Dermatology has expressed concerns about potential risks of tanning with UVA radiation (Ref. 6).

Based on available evidence, FDA concludes that to exempt UVA lamps from the warning statement required by the standard would not promote the public health and safety.

7. One comment disagreed with the language of the warning statement set forth in § 1040.20(d)(1) of the proposed amendments and argued that the statement, "If you do not tan in the sun, you are unlikely to tan from the use of this product," would be inappropriate because it may confuse the sunlamp user. The comment argued that the action of direct exposure to the sun cannot be compared to that of exposure to either UVA or UVB suntanning equipment; that the current warnings already clearly and accurately provide the same information in more detail; and

that the quoted statement would be redundant to the statement "Consult a physician before using lamp if taking any medication or if you believe yourself sensitive to sunlight."

The agency disagrees with the comment. The scientific literature clearly demonstrates that some people do not tan or that they tan only with great difficulty using either the sun or sunlamps (Ref. 7). People who, when exposed to the sun, do not tan or tan only with great difficulty should be informed about the futility of exposures to potentially hazardous ultraviolet radiation.

8. A comment disagreed with the requirements of § 1040.20(d)(1)(vi) and (2) of the proposed amendments, arguing that there are not any lamps that are "uniquely designed" for a particular sunlamp product. According to the comment, only a few manufacturers of lamps manufacture replacement lamps for other manufacturers' sunlamp products. The comment stated that FDA is providing an unfair competitive advantage to certain manufacturers and a great disadvantage to others because the additional labeling would be extremely expensive, in monetary as well as person-hour terms. The comment said that the requirement would have a significant impact on a substantial number of small entities, as this term is used in the Regulatory Flexibility Act. The comment stated further that it would be impossible for some manufacturers to maintain and service their own products because their products are distributed throughout the country and urged the agency not to exempt any sunlamp products or ultraviolet lamps from the proposed labeling requirements. According to the comment, there would be no way for FDA to monitor whether a particular unit was being maintained and serviced by the manufacturer or its agent.

After having reviewed reports submitted to the agency under Part 1002 (21 CFR Part 1002), FDA agrees that there are few ultraviolet lamps that are unique to a sunlamp product. The agency concludes that a substitute lamp could be made by other manufacturers. Also, FDA agrees that monitoring the maintenance and servicing of sunlamp products would be difficult and would not be warranted. For these reasons, FDA has concluded not to exempt any sunlamp products or ultraviolet lamps from the labeling requirements and has revised final § 1040.20(d)(1)(vi) and (2) accordingly.

The comment does, however, illustrate that manufacturers use lamps produced by other firms. It is also

apparent that many of these lamps are equivalent and can be used safely in a number of different models of sunlamp products. The current standard is not clear on how a person or manufacturer would be able to determine that a replacement lamp is equivalent to that designated on the sunlamp product to be used in the product. FDA advises that replacement lamps must comply with each applicable requirement of the performance standard and be certified under § 1010.2 of the regulations (21 CFR 1010.2). Section 1040.20(e) requires that any ultraviolet lamp not accompanying a sunlamp product contain instructions for its safe use. Thus, the manufacturer of a replacement ultraviolet lamp is required to state in the user instructions any specific model of ultraviolet lamps for which the manufacturer is promoting its lamp as a replacement. FDA has revised § 1040.20(e)(2) in the final rule to make this concept clear. FDA advises that the promotion of incompatible lamps will be considered as marketing a falsely certified product.

Effective Date

The final rule will become effective September 8, 1986, for sunlamp products and ultraviolet lamps that are manufactured on or after this date. Sunlamp products and ultraviolet lamps manufactured on or after May 7, 1980, but before September 8, 1986, are subject to the provisions of 21 CFR 1040.20 as published in the Federal Register of November 9, 1979 (44 FR 65357). The agency, however, does not object to any manufacturer of a sunlamp product or ultraviolet lamp complying with the final rule after it is published and prior to its effective date, provided the manufacturer specifies on the certification label for the product that it complies with the amended standard and provided the manufacturer complies with the recordkeeping and reporting requirements of Part 1002.

References

The following references are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Forbes, P.D., R.E. Davies, and C.A. Cole, "Photocarcinogenesis by UVA Alone," Abstract MAM-D6, Tenth Annual Meeting, American Society for Photobiology, Vancouver, BC, Canada, June 27-July 1, 1982.
2. Van Weelden, H., F.R. de Gruij, and J.C. van der Leun, "Tumors Induced by UVA in Mice," Abstract WAM-F4, *Photochemistry and Photobiology*, 75:79, 1983.

3. Staberg, B., et al., "The Carcinogenic Effect of UVA Irradiation," *Journal of Investigative Dermatology*, 81:517-519, 1983.

4. Sutherland, B.M., P. Runge, and J.C. Sutherland, "DNA Photoreactivating Enzyme from Placental Mammals. Origin and Characteristics," *Biochemistry*, 23:4710-4715, 1974.

5. Mutzhas, M.F., et al., "A New Apparatus with High Radiation Between 320-400 nm: Physical Description and Dermatological Applications," *Journal of Investigative Dermatology*, 76:42-47, 1981.

6. Jeffry, Jr., T.E., "Danger of Tanning Booths Bared, New Release," American Academy of Dermatology, Evanston, IL, May 1, 1983.

7. Pathak, M.A., "Sunscreens: Topical and Systemic Approaches for Protection of Human Skin Against Harmful Effects of Solar Radiation," *Journal of the American Academy of Dermatology*, 7:285-311, 1982.

Economic Impact

FDA has evaluated the economic consequences of this action in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). This action has been determined not to be a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A threshold assessment supporting this conclusion is on file with the Dockets Management Branch (address above).

Paperwork Reduction Act of 1980

Section 1040.20 (d) and (e) of this final rule contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0195.

List of Subjects in 21 CFR Part 1040

Electronic products, HID lamps, Incorporation by reference, Lasers, Medical devices, Radiation protection, Standards, Sunlamps.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, Part 1040 is amended to read as follows:

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

1. The authority citation for Part 1040 continues to read as follows:

Authority: Secs. 358, 360A, 82 Stat. 1177-1179, 1182 (42 U.S.C. 263f, 263j); 21 CFR 5.10.

2. By revising § 1040.20, to read as follows:

§ 1040.20 Sunlamp products and ultraviolet lamps intended for use in sunlamp products.

(a) *Applicability.* (1) The provisions of this section, as amended, are applicable as specified herein to the following products manufactured on or after September 8, 1986.

- (i) Any sunlamp product.
- (ii) Any ultraviolet lamp intended for use in any sunlamp product.

(2) Sunlamp products and ultraviolet lamps manufactured on or after May 7, 1980, but before September 8, 1986, are subject to the provisions of this section as published in the Federal Register of November 9, 1979 (44 FR 65357).

(b) *Definitions.* As used in this section the following definitions apply:

(1) "Exposure position" means any position, distance, orientation, or location relative to the radiating surfaces of the sunlamp product at which the user is intended to be exposed to ultraviolet radiation from the product, as recommended by the manufacturer.

(2) "Intended" means the same as "intended uses" in § 801.4.

(3) "Irradiance" means the radiant power incident on a surface at a specified location and orientation relative to the radiating surface divided by the area of the surface, as the area becomes vanishingly small, expressed in units of watts per square centimeter (W/cm²).

(4) "Maximum exposure time" means the greatest continuous exposure time interval recommended by the manufacturer of the product.

(5) "Maximum timer interval" means the greatest time interval setting on the timer of a product.

(6) "Protective eyewear" means any device designed to be worn by users of a product to reduce exposure of the eyes to radiation emitted by the product.

(7) "Spectral irradiance" means the irradiance resulting from radiation within a wavelength range divided by the wavelength range as the range becomes vanishingly small, expressed in units of watts per square centimeter per nanometer (W/(cm²/nm)).

(8) "Spectral transmittance" means the spectral irradiance transmitted through protective eyewear divided by the spectral irradiance incident on the protective eyewear.

(9) "Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by

ultraviolet radiation with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

(10) "Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

(11) "Ultraviolet lamp" means any lamp that produces ultraviolet radiation in the wavelength interval of 200 to 400 nanometers in air and that is intended for use in any sunlamp product.

(c) *Performance requirements* (1) *Irradiance ratio limits.* For each sunlamp product and ultraviolet lamp, the ratio of the irradiance within the wavelength range of greater than 200 nanometers through 260 nanometers to the irradiance within the wavelength range of greater than 260 nanometers through 320 nanometers may not exceed 0.003 at any distance and direction from the product or lamp.

(2) *Timer system.* (i) Each sunlamp product shall incorporate a timer system with multiple timer settings adequate for the recommended exposure time intervals for different exposure positions and expected results of the products as specified in the label required by paragraph (d) of this section.

(ii) The maximum timer interval(s) may not exceed the manufacturer's recommended maximum exposure time(s) that is indicated on the label required by paragraph (d)(1)(iv) of this section.

(iii) No timer interval may have an error greater than 10 percent of the maximum timer interval of the product.

(iv) The timer may not automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle, when emission from the sunlamp product has been terminated.

(v) The timer requirements do not preclude a product from allowing a user to reset the timer before the end of the preset time interval.

(3) *Control for termination of radiation emission.* Each sunlamp product shall incorporate a control on the product to enable the person being exposed to terminate manually radiation emission from the product at any time without disconnecting the electrical plug or removing the ultraviolet lamp.

(4) *Protective eyewear.* (i) Each sunlamp product shall be accompanied by the number of sets of protective eyewear that is equal to the maximum number of persons that the instructions provided under paragraph (e)(1)(ii) of this section recommend to be exposed simultaneously to radiation from such product.

(ii) The spectral transmittance to the eye of the protective eyewear required

by paragraph (c)(4)(i) of this section shall not exceed a value of 0.001 over the wavelength range of greater than 200 nanometers 320 nanometers and an value of 0.01 over the wavelength range of greater than 320 nanometers through 400 nanometers, and shall be sufficient over the wavelength greater than 400 nanometers to enable the user to see clearly enough to reset the timer.

(5) *Compatibility of lamps.* An ultraviolet lamp may not be capable of insertion and operation in either the "single-contact medium screw" or the "double-contact medium screw" lampholders described in American National Standard C81.10-1976, Specifications for Electric Lamp Bases and Holders—Screw-Shell Types, which is incorporated by reference. Copies are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Label requirements.* In addition to the labeling requirements in Part 801 and the certification and identification requirements of §§ 1010.2 and 1010.3, each sunlamp product and ultraviolet lamp shall be subject to the labeling requirements prescribed in this paragraph and paragraph (e) of this section.

(1) *Labels for sunlamp products.* Each sunlamp product shall have a label(s) which contains:

(i) A warning statement with the words "DANGER—Ultraviolet radiation. Follow instructions. Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer. WEAR PROTECTIVE EYEWEAR; FAILURE TO MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult physician before using sunlamp if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of this product."

(ii) Recommended exposure position(s). Any exposure position may be expressed either in terms of a distance specified both in meters and in feet (or in inches) or through the use of markings or other means to indicate clearly the recommended exposure position.

(iii) Directions for achieving the recommended exposure position(s) and

a warning that the use of other positions may result in overexposure.

(iv) A recommended exposure schedule including duration and spacing of sequential exposures and maximum exposure time(s) in minutes.

(v) A statement of the time it may take before the expected results appear.

(vi) Designation of the ultraviolet lamp type to be used in the product.

(2) *Labels for ultraviolet lamps.* Each ultraviolet lamp shall have a label which contains:

(i) The words "Sunlamp—DANGER—Ultraviolet radiation. Follow instructions."

(ii) The model identification.

(iii) The words "Use ONLY in fixture equipped with a timer."

(3) *Label specifications.* (i) Any label prescribed in this paragraph for sunlamp products shall be permanently affixed or inscribed on an exterior surface of the product when fully assembled for use so as to be legible and readily accessible to view by the person being exposed immediately before the use of the product.

(ii) Any label prescribed in this paragraph for ultraviolet lamps shall be permanently affixed or inscribed on the product so as to be legible and readily accessible to view.

(iii) If the size, configuration, design, or function of the sunlamp product or ultraviolet lamp would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, or would render the required label unnecessary, the Director, Office of Compliance (HFZ-300), Center for Devices and Radiological Health, on the Center's own initiative or upon written application by the manufacturer, may approve alternate means of providing such label(s), alternate wording for such label(s), or deletion, as applicable.

(iv) In lieu of permanently affixing or inscribing tags or labels on the ultraviolet lamp as required by §§ 1010.2(b) and 1010.3(a), the manufacturer of the ultraviolet lamp may permanently affix or inscribe such required tags or labels on the lamp packaging uniquely associated with the lamp, if the name of the manufacturer and month and year of manufacture are permanently affixed or inscribed on the exterior surface of the ultraviolet lamp so as to be legible and readily accessible to view. The name of the manufacturer and month and year of manufacture affixed or inscribed on the exterior surface of the lamp may be expressed in code or symbols, if the manufacturer has previously supplied

the Director, Office of Compliance (HFZ-300), Center for Devices and Radiological Health, with the key to such code or symbols and the location of the coded information or symbols on the ultraviolet lamp. The label or tag affixed or inscribed on the lamp packaging may provide either the month and year of manufacture without abbreviation, or information to allow the date to be readily decoded.

(v) A label may contain statements or illustrations in addition to those required by this paragraph if the additional statements are not false or misleading in any particular; e.g., if they do not diminish the impact of the required statements; and are not prohibited by this chapter. (Information collection requirements approved by the Office of Management and Budget under control number 0910-0195.)

(e) *Instructions to be provided to users.* Each manufacturer of a sunlamp product and ultraviolet lamp shall provide or cause to be provided to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, adequate instructions for use to avoid or to minimize potential injury to the user, including the following technical and safety information as applicable:

(1) *Sunlamp products.* The users' instructions for a sunlamp product shall contain:

(i) A reproduction of the label(s) required in paragraph (d)(1) of this section prominently displayed at the beginning of the instructions.

(ii) A statement of the maximum number of people who may be exposed to the product at the same time and a warning that only that number of protective eyewear has been provided.

(iii) Instructions for the proper operation of the product including the function, use, and setting of the timer and other controls, and the use of protective eyewear.

(iv) Instructions for determining the correct exposure time and schedule for persons according to skin type.

(v) Instructions for obtaining repairs and recommended replacement components and accessories which are compatible with the product, including compatible protective eyewear, ultraviolet lamps, timers, reflectors, and filters, and which will, if installed or used as instructed, result in continued compliance with the standard.

(2) *Ultraviolet lamps.* The users' instructions for an ultraviolet lamp not accompanying a sunlamp product shall contain:

(i) A reproduction of the label(s) required in paragraph (d) (1) (i) and (2) of this section, prominently displayed at the beginning of the instructions.

(ii) A warning that the instructions accompanying the sunlamp product

should always be followed to avoid or to minimize potential injury.

(iii) A clear identification by brand and model designation of all lamp models for which replacement lamps are promoted, if applicable.

(Information collection requirements approved by the Office of Management and Budget under control number 0910-0195.)

(f) *Test for determination of compliance.* Tests on which certification pursuant to § 1010.2 is based shall account for all errors and statistical uncertainties in the process and, wherever applicable, for changes in radiation emission or degradation in radiation safety with age of the product. Measurements for certification purposes shall be made under those operational conditions, lamp voltage, current, and position as recommended by the manufacturer. For these measurements, the measuring instrument shall be positioned at the recommended exposure position and so oriented as to result in the maximum detection of the radiation by the instrument.

Dated: August 12, 1985.

Joseph P. Hille,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-21253 Filed 9-5-85; 8:45 am]

BILLING CODE 4160-01-M

30 CFR Part 944

Friday
September 6, 1985

Part V

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Part 944
Permanent State Regulatory Program of
Utah; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Permanent State Regulatory Program of Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its approval of an extension of the deadline for Utah to resubmit rules (1) governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850, and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 20, 1984, Utah requested an extension to develop a blaster certification program. On June 8, 1984, OSM announced its decision to extend Utah's deadline to June 10, 1985 (49 FR 23836). On June 6, 1985, Utah indicated that an additional six-month extension was necessary.

On July 10, 1985, OSM invited public comment on the proposal to extend the deadline for an additional six months (50 FR 28107).

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. OSM is announcing its approval to modify the deadline for Utah to develop and adopt its blaster program.

EFFECTIVE DATE: September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to

examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Utah's program, the applicable date is 12 months after publication date of OSM's rule or March 4, 1984.

On March 20, 1984, the State of Utah submitted to OSM a request for an extension until April 4, 1985, to submit final rules addressing the blaster certification program. In the April 23, 1984 *Federal Register* (49 FR 17040), OSM proposed a thirteen-month extension for Utah to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending May 23, 1984. On June 8, 1984 (49 FR 23836), OSM announced its decision to extend the deadline for Utah to develop a program; giving Utah 12 months additional time to study the rule and statutory changes needed to bring Utah's rules into compliance with the revised Federal rules, and extending the deadline period to June 10, 1985.

The Utah Rules Revision Committee planned to formulate a blaster certification program together with other revisions to the Federal rules. The State indicated that its certification program, which is administered through the Utah Industrial Commission, would provide the necessary protection until the State developed a program under its approved surface mining regulatory program.

In a June 6, 1985 letter to OSM, the State of Utah indicated that an additional six-month extension was necessary to review any of OSM's concerns and changes to its proposed program. The State noted that in considering the impact of a six-month extension, OSM should recognize that Utah is predominately an underground coal mining State, and that coal mining currently underway in the State is underground mining. Blasting associated with those operations is under the direction of the Utah Industrial Commission, in coordination with the Mine Safety and Health Administration.

On July 10, 1985, OSM announced procedures for the public comment period on the State's request to further extend the deadline to submit a blaster certification program (50 FR 28107). The public comment period ended August 9, 1985. No comments were received by OSM in response to the request for comments.

Director's Decision

In accordance with the State's request, the Director has decided to extend the deadline for Utah to submit a proposed blaster training program. The Director is granting the State an extension of six months. This extension will allow the Utah Division of Oil, Gas and Mining an opportunity to coordinate the development of the program with the Utah Industrial Commission.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 25, 1985.

Jed O. Christensen,
Acting Director, Office of Surface Mining.

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 944 is amended by revising § 944.16 to read as follows:

§ 944.16 Required program amendments.

Pursuant to 30 CFR 732.17 Utah is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 6, 1986, Utah shall submit for OSM's approval:

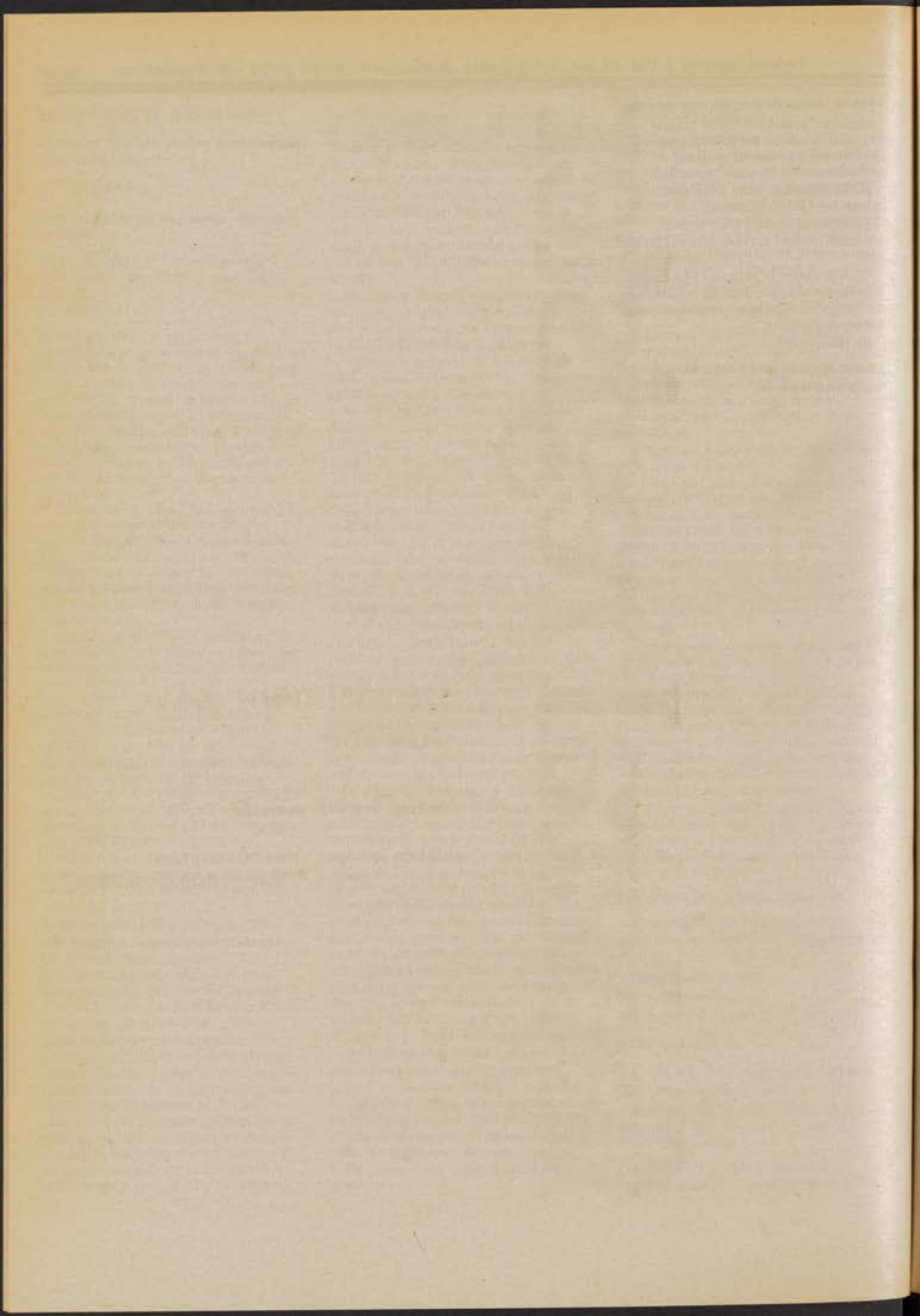
(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) [Reserved].

[FR Doc. 85-21303 Filed 9-5-85; 8:45 am]

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Department of Justice
Federal Register

Friday
September 6, 1985

Part VI

**Department of
Justice**

Office of Juvenile Justice and
Delinquency Prevention

Notice of Issuance of Program
Announcement, "Nonparticipating State
Initiative"

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency PreventionNotice of Issuance of Program
Announcement, "Nonparticipating
State Initiative"

AGENCY: Office of Juvenile Justice and
Delinquency Prevention, Justice.

ACTION: Notice of Issuance of Program
Announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5633, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-509, and Pub. L. 98-473) (hereinafter "Act") is issuing a program announcement and a solicitation for applications from States not participating in the formula grant program as authorized by Part B, Subpart I of the Act. Eligible applicants are limited to local public and private nonprofit agencies in those States not participating in the Act. Those States are North Dakota, South Dakota, Nevada, Wyoming and Hawaii.

I. Introduction and Background

Pursuant to section 223(d) of the Act, the OJJDP Administrator must endeavor to make the formula grant fund allotment under section 222(a) of the Act, of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving:

A. Section 223(a)(12)(A), which provides that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities. This does not mean that such juveniles may not come under the jurisdiction of the juvenile justice system, nor does it mean that such juveniles may not be placed under supervised custody by the juvenile court in circumstances which conform to section 223(a)(12)(A) limitations on placement in secure facilities;

B. Section 223(a)(13), which provides that juveniles alleged to be or found to

be delinquent, status offenders, and nonoffenders shall not be detained or confined in any institution in which they have regular contact with incarcerated adults convicted of crimes or awaiting trial on criminal charges;

C. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

- Are outside a Metropolitan Statistical Area,
- have no existing acceptable alternative placements available, and
- provide for the sight and sound separation of juveniles and incarcerated adults.

II. Definition of Terms

A. *Adult jail.* A locked facility, administered by State, county, or local law enforcement and public or private correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders usually sentenced for less than one year.

B. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

C. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

D. *Accused juvenile.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

E. *Adjudicated juvenile.* The juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

F. *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

G. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

H. *Local private nonprofit agency.* A private nonprofit agency or organization that provides services within an identifiable unit or a combination of units of general local government, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS be tax-exempt under the provisions of section 510(c)(3) of the 1954 Internal Revenue Code.

I. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

J. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

K. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the Act and thus is not participating in the formula grant program authorized by Part B of the Act; or a State found ineligible to receive funds because of failure to achieve or maintain compliance with a statutory mandate.

L. *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

M. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

N. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

O. *State Program Coordinator*: The agency/organization selected by OJJDP to implement Phase I and II of this Initiative.

III. Program Objectives

Pursuant to section 223(d) of the Act and coupled with sections 223(a) (12), (13) and (14), the OJJDP is sponsoring a program to support the development and implementation of projects to improve the detention and incarceration practices, policies, programs, and alternative services within nonparticipating States which address the problems associated with placing status offenders in secure facilities and any juveniles in adult jails and lockups. This program is intended to provide resources, both financial and technical, to jurisdictions in nonparticipating States to assist them in planning and implementing a viable strategy for providing court ordered supervision and protection programs for status offenders and nonoffenders as an alternative to the use of secure facilities, thereby moving the State toward compliance with section 223(a)(12)(A), and achieving both separation of juveniles and incarcerated adults and removal of juveniles from adult jails and lockups. This solicitation is an attempt to make it possible for non-participating States to move toward compliance with Act mandates while still providing appropriate supervision for children in need of supervision. It is hoped that alternatives to secure detention can be found that provide adequate supervision and protection for status offenders without requiring authorities to charge the offender with a criminal offense.

IV. Program Description

A. Problem Addressed

Many communities have not been able to implement the mandates of the Act because the State elected not to participate in the formula grant program or became ineligible to continue participating in the program. The limited number of alternative resources available to them has often resulted in an over reliance on the use of jails, lockups and other secure facilities for criminal-type, status and non-offenders.

This program is aimed at providing resources to establish alternative programs and services to eliminate the use of secure facilities for the placement of status offenders and non-offenders and the use of adult jails and lockups for the detention of juveniles. It is also intended to focus on the policies and practices which result in the inappropriate placement of youth. The

major areas of concern include, but are not limited to:

- A general lack of alternative residential and non-residential programs for youth awaiting court appearance.
- Lack of community resources to effectively provide supervisory control and protection of status offenders and non-offenders in the community, in the schools and within the family structure, particularly drug and alcohol dependent youth, runaways and truants, resulting in subsequent uncontrollable behavior and victimization.
- A lack of 24-hour intake screening and a lack of objective intake criteria.

B. Target Population

The population expected to benefit from this initiative is juveniles who are currently held in adult jails and lockups and status offenders and non-offenders who are either being placed in secure facilities, or who, because they are being ignored by the juvenile justice system, are at risk of future placement in such facilities.

C. Results Sought

1. The removal of juveniles from adult jails and lockups through identification, development and utilization of viable alternatives to the use of adult jails and lockups.
2. The development of a flexible network of service and placement options for juvenile offenders and non-offenders which will provide supervision and control to such juveniles, protect them from victimization and exploitation, and hold them accountable for their offenses.
3. The development and adoption of intake criteria, consistent with nationally recommended standards, for alleged juvenile offenders and non-offenders who are awaiting court appearance.
4. An enhanced capacity for parents, schools, and police to resolve problems of youth without the use of jails and lockups. This includes, where appropriate, the coordination and integration of public and private juvenile services.

V. Program Strategy

This program employs a two-phased approach. Phase I is a planning and analysis period with Phase II being the implementation of the plan developed within the nonparticipating State. A State Program Coordinator (SPC) will be selected by OJJDP through this competitive announcement and, through a 24-month cooperative agreement with OJJDP, will receive an award of funds to

implement both Phase I and Phase II of this program. During Phase I, the State Program Coordinator will develop, in conjunction with local jurisdictions across the State, a systematic Statewide plan for: (1) Removing juveniles from adult jails and lockups; and (2) removing status offenders and non-offenders from secure facilities by providing court ordered supervision and protection programs for such status offenders and non-offenders. During Phase II the SPC will act as the conduit for funds to local jurisdictions and provide the necessary coordination and oversight of the plan implementation.

A. Phase I: Planning and Analysis

Phase I is directed toward planning and analysis which will result in an action plan for removing juveniles from adult jails and lockups and the supervision and protection of status offenders and non-offenders which will be available upon removal from secure facilities. The State Program Coordinator, with technical assistance from OJJDP as necessary, will undertake a planning process consisting of a definition and assessment of the problems, needs assessment, policy and plan development, program development, and program monitoring.

During Phase 1, which will be completed during a six month period, the following problems should be addressed with appropriate strategies developed and incorporated into an action plan:

1. Lack of coordination and cooperation between enforcement officials, the judiciary, public and private service providers, and local public interest groups, which contribute to the inappropriate placement of juveniles in jails and lockups.
2. Need to develop a flexible network of services and programs, amenable to the local jurisdiction's needs and capabilities.
3. Need to develop alternative services which can be sustained over time with local resources, inclusive of but not limited to:
 - a. Supervision of juveniles in facilities which conform to the Act definition of "secure," but which control the self-destructive behavior of juveniles.
 - b. Intensive supervision in a child's home as a placement alternative.
 - c. Emergency foster care, shelter care and independent living arrangements.
 - d. Crisis intervention services and short-term residential crisis intervention programs which can be used for conflict mediation, emergency holding and provision of emergency attention for

youth with physical or emotional problems.

e. Development of objective intake criteria which are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

B. Phase II: Plan Implementation

Phase II will implement the comprehensive strategy to supervise and protect status offenders and non-offenders and remove juveniles from adult jails, developed in Phase I. This will be accomplished by the State Program Coordinator contracting the program dollars to local jurisdictions to implement specific programs and projects during the 18 months remaining in the initial budget period upon completion of Phase I. The SPC, with the assistance of OJJDP, will provide financial and program assistance to support plan implementation.

The responsibilities of the SPC will include, but will not be limited to, working with key local officials in development of the program implementation strategy developing selection criteria for determining which projects will receive funds, screening applicants, and following final review and approval by OJJDP, award contracts for project implementation. The SPC also will provide assistance to project implementors in maintaining financial accountability, and coordinate activities within the State to ensure that funded projects are consistent with the plan developed and are meeting defined objectives consistent with this program announcement.

VI. Dollar Range and Number of Awards

A. The project period for this program is three years from date of award, with a total funding commitment of up to \$450,000 for the initial two year budget period for each of the applicants selected in the five nonparticipating States. A final 12 month budget period award will be based upon satisfactory completion of identified objectives and is subject to availability of Fiscal Year 1986 funds to carry out the purposes of section 223(d) of the Act. Funds will be made available through a cooperative agreement. Financial support for the SPC (planning and administration costs) may not exceed \$90,000 for the initial budget period (i.e., 20% of the total \$450,000 award). The remainder of the initial budget period award will be contracted by the SPC to local public and private nonprofit agencies for

implementation of Phase II of the Initiative. SPC financial support for the second budget period will be negotiated on a case by case basis, not to exceed 20% of the award. Financial assistance provided under this program requires no matching contribution except as provided in section VI-C of this announcement regarding construction funds.

B. One application per State will be selected for each of the five nonparticipating States pursuant to the selection criteria established in this announcement, and consistent with the OJJDP Competition and Peer Review Policy as issued in the *Federal Register* on August 2, 1985 (50 FR 31361). The agency organization selected as the SPC will not be eligible to receive funds for purposes related to section 223(d) beyond the three year project period.

C. Up to one-fourth of the funds received by a subrecipient local jurisdiction for Phase II may be used for construction or renovation purposes. All construction funds must be used for innovative community-based facilities for less than 20 persons which meet the secure requirements of the Act and must be approved in advance by OJJDP. All construction funds must be matched dollar for dollar (in cash) by the local jurisdiction. The SPC and the local jurisdiction will be held accountable for adherence to section 227 of the Act and the requirements for construction programs as contained in the effective edition of the Financial and Administrative Guide for Grants, M7100.1. In addition, the erection of new buildings or the renovation of jails or lockups will not be permitted with funds acquired through this program.

VII. Program Eligibility/Applicant Capability

Applications to serve as the State Program Coordinator are invited from local public and local private nonprofit agencies within the five nonparticipating States (Hawaii, Nevada, North Dakota, South Dakota, and Wyoming), which have knowledge and experience in developing and/or implementing programs and projects on a Statewide basis at the local level.

The applicant must:

A. Demonstrate knowledge of and experience with juvenile justice systems; local jails, lockups, and secure detention facilities; the problems, strategies and program alternatives necessary to achieve the objectives of this program; and, plan development and implementation.

B. Have the demonstrated capability or experience to develop management

and fiscal systems necessary for the proper administration of Federal funds.

C. Demonstrate its ability to fulfill the activities and responsibilities identified in Section V of this announcement.

D. Demonstrate the ability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the Boards of public and private youth service providers which exist within the State.

E. Provide a detailed task specific description of activities which include a proposed level of OJJDP involvement in each task.

VIII. Application Submission Procedures and Deadlines

Prospective applicants for the State Program Coordinator must mail or hand deliver one (1) original and two (2) copies of the application, using Standard Form 424 to Mrs. Emily C. Martin, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, by October 4, 1985. Applications sent by mail will be considered to be received on time if sent by registered mail or certified mail no later than October 4, 1985, as evidence by the U.S. Postal Service postmark or the receipt from the U.S. Postal Services. Section IX of this program announcement identifies what must be contained in the application for the State Program Coordinator.

IX. Contents and Selection Criteria for the State Program Coordinator Applications

A. Contents of Application

These requirements are to be used in lieu of the Part D-Program Narrative instructions in the Standard Federal Assistance Form 424. In order to be considered for funding, applications for the State Program Coordinator must include the following:

1. *Project Goals and Objectives.* Identify the specific objectives and describe the program strategy to be pursued in accomplishing the results sought by this solicitation. Discuss in detail the tasks and activities necessary to accomplish stated objectives. Provide a 24 month workplan, broken down into six month segments, which identifies objectives in relation to tasks, specific milestones and timeframes. Each task should include a proposed level of OJJDP involvement.

2. *Problem Definition.* a. Discuss for your State your understanding of: (1) The placement of juveniles in adult jails and lockups and status offenders and

non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (2) State legislative activities related to supervision and protection of status offenders and non-offenders and jail removal, and (3) program, services and various approaches which can be explored in an effort to achieve the Act's mandates.

b. Discuss the anticipated major difficulties and problem areas in the management and implementation of Phase I activities, selection of jurisdictions for implementing Phase II, management of Phase II activities, and coordination with OJJDP. This discussion of anticipated problems should also address potential or recommended approaches for their solution.

c. Proposals must address the following points regarding qualification and experience of the applicant.

(1) Provide adequate documentation that the applicant is a local public or local private nonprofit agency.

(2) Describe experience with similar or related projects completed or now underway.

(3) Identify the local/State mechanisms established, or to be established, to effect Statewide coordination, and provide documentation that the applicant has the clear support of State and local officials in planning and implementing a Statewide program.

(4) Identify key personnel, along with their responsibilities and the approximate percentage of time and duration each will be available for this program. Resumes which indicate relevant education and experience are required.

d. The applicant must also provide the information requested below with the information numbered and labeled according to the following:

Note.—Items asterisked should not be submitted with the application. They will be required at the end of Phase I, for those applicants selected.

(1) Description of State demographics including number of counties and cities, juvenile population and size of area(s).

(2) Description of the current system, size, and workload.

*(3) Description of the current juvenile intake and detention processes, intake criteria, resources, constraints, legal framework (including a summary of all relevant laws and formal administrative policies and procedures bearing on the issue of detaining youth), and other financial or funding sources.

*(4) Statements to the number of adult jails and lockups in the State and the number of secure (juvenile only) detention and correctional facilities. Include the holding capacity for both juveniles and adults in each.

(5) Statement of need including a brief description as to the reasons why juveniles are held in local jails or lockups and why status offenders and non-offenders are held in secure facilities.

*(6) Total number of juveniles detained in adult jails and lockups for the latest (2-month period); total number of status offenders held in secure facilities; and the total number of these detained or incarcerated in sight and sound contact with adult offenders.

*(7) A brief description of the existing jail alternatives, including both secure and non-secure alternatives.

(8) Assurance that the courts of juvenile jurisdiction are willing to reexamine intake criteria and experiment with alternative criteria.

(9) A documented statement of willingness of key juvenile justice agencies and local officials to develop community-based or other release options, to apply local financial resources to the effort, to continue the effort once Federal financial support ceases, and to consider nationally recognized standards, regulations and guidelines pertaining to juveniles awaiting court appearance.

(10) Letters of support from local juvenile court officials, law enforcement officials, and local child service providers which demonstrate a commitment to meeting the objectives of this program.

(11) A brief explanation of problems and/or reasons for the State's nonparticipation in the Act.

3. *Program Methodology.* Provide a plan and program design to accomplish the following administrative and developmental tasks:

a. Project Administration.

(1) Propose an administrative, management and fiscal structure. This structure must reflect the relationship between jurisdictions who will implement Phase II of this initiative and the applicant SPC organization.

(2) Provide an implementation plan which includes a schedule, management policies and organizational chart to show provisions for quality control and compliance with Federal requirements.

b. Plan development for implementing Phase I and Phase II of the Nonparticipating State Initiative.

(1) Outline a plan for implementing Phase I and involving local jurisdictions in the entire Phase I effort. Include a timeframe, task identification and the

product of each stage in implementing Phase I.

(2) Outline a plan for developing selection criteria and screening of potential local jurisdictional sites for Phase II participation and describe a cooperative process with OJJDP for identifying those projects which will be recommended by the SPC or OJJDP approval.

(3) Outline a plan for soliciting, receiving, assessing and processing applicants from local jurisdictions for Phase II.

(4) Outline a plan for the management of all Phase II contracts/subgrants. This plan should include:

a. procedures for assuring the local jurisdictional compliance with OJJDP program and fiscal requirements.

b. procedures for on-site monitoring of all Phase II activities.

c. procedures for assuring that all Phase II local jurisdictions meet quarterly program and fiscal reporting requirements.

d. procedures for monitoring the impact of Phase II as it relates to achieving the objectives of this program announcement.

B. Selection Criteria

Applicants for the State Program Coordinator will be evaluated on methodology, management, and capability and their responsiveness to the specifications in the program announcement as evidenced by their application submission.

1. *Applicant Capability*—Applicants must evidence the following qualifications and experience: (35 points)

a. A local public or local private nonprofit agency with diversified experiences in working with local jurisdictions to effectuate plans and programs for youth and in establishing services and policy changes at the local, regional and Statewide level. (15 points)

b. Ability to establish effective relationships with the juvenile justice system and alternative service providers. (5 points)

c. Availability of key staff experienced in providing diverse populations with technical expertise in substantive topics related to the development and implementation of plans. (5 points)

d. Capability and expertise in maintaining and managing contracts/subgrants where local jurisdictions will be implementing various projects, new policies, and different techniques. (10 points)

2. *Understanding of Proposed Methodology*—Applicants must

evidence an understanding of the following: (20 points)

a. The required steps in the development and implementation of the planning and analysis phase (Phase I). (10 points)

b. The required steps in the implementation phase (Phase II) including the necessary OJJDP approval at each decision point. (10 points)

3. *Management Capability*—

Applicants must evidence management capability as follows: (45 points)

a. The completeness of the application with respect to organization management of Phase I, project selection process, and management of the subcontracts/subgrantee activities, and management of Phase II. (20 points)

b. The feasibility of the workplan with respect to milestones, timeframes, workload, and cost. (15 points)

c. The completeness of the plan for assuring compliance with OJJDP administrative, statutory and fiscal requirements. (10 points)

Applications will be evaluated by a peer review panel. The application from each of the five (5) eligible States which receives the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP, provided that required changes in the

application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42. Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person

or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

XI. Contact

For further information contact: Mr. Doyle A. Wood, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-5921.

Alfred S. Regnery,

Administrator, OJJDP.

[FR Doc. 85-21308 Filed 9-5-85; 8:45 am]

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